

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
SOUTHERN DIVISION

USA,)
)
 Plaintiff,)
)
 vs.) Case No.
) 4:22-CR-00103-DN
ADRIAN JOSEPH ALVARADO,)
)
 Defendant.)
)

DAY 1 OF 2 SUPPRESSION HEARING
BEFORE THE HONORABLE
JUDGE PAUL KOHLER

NOVEMBER 8, 2023

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United States Federal Court
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PROCEEDINGS

2 THE COURT: Thank you. Well, to those of
3 you expecting the venerable Judge Nuffer, apologies,
4 you are stuck with me; but I think we will get through
5 things here.

6 Let me note a couple of things. I know
7 Judge Nuffer likes to in a suppression hearing sort
8 of at the end of it make findings of fact and then
9 have the parties brief based on those findings of
10 fact. That is not my preferred method. I think I
11 would prefer to do it in the more traditional way.

12 Order briefing after the transcript has been
13 produced, that kind of thing. But I don't want to
14 disrupt something that Judge Nuffer has put in place.
15 So give that a little thought; we can talk about that
16 if you're not sure at this moment.

17 Otherwise, I think we will proceed in the
18 sort of traditional way here. Let me make sure the
19 record is clear. We are here on United States versus
20 Adrian Alvarado case. Case 4:22-CR-103.

21 Let me have attorneys state their appearance
22 for the record, please, starting with the prosecution.

23 MS. REDDISH-DAY: Good afternoon, Your
24 Honor, Angie Reddish-Day on behalf of the United
25 States.

1 MR. HOOD: And Joseph Hood on behalf of the
2 United States.

3 THE COURT: Very good, thank you.

4 MR. BERARDI: Frank Berardi for
5 Mr. Alvarado.

6 THE COURT: Very good. The other thing I
7 would like to do to get things started today, I have
8 looked at the motion itself and some of the underlying
9 documents in the case.

10 I would like the parties to just give me a
11 very brief opening statement just suggesting your view
12 on the case and what the issues are likely to be as we
13 move forward today. And at least identify if it
14 appears to you that all theories will be under the
15 exclusionary rule and the burden shifts to the United
16 States on that.

17 So, Mr. Berardi, why don't I start with you.
18 And just some very overview thoughts.

19 MR. BERARDI: Your Honor, first, we'd ask
20 the exclusionary rule be invoked.

21 The summary of the case basically is Officer
22 Tanner appears to have a high tendency to stop
23 Hispanics, this is a pretextual stop. His reports
24 tend to contradict the video evidence of the stop,
25 i.e. there's time discrepancies, there's discrepancies

1 of fact, omission of significant facts, tending to
2 show an intent to mislead fact finders.

3 The initial reason for the officer claim was
4 for a window tint violation. That was then dropped,
5 and it was decided because the tint was legal that
6 Officer Tanner then went with something hanging from
7 the rear-view mirror, and following too close to be
8 the reasons he said he pulled the vehicle over.

9 He is heard telling the driver that having
10 anything hanging three to four inches from the mirror
11 is illegal. Following a close -- following too close
12 is the second reason. That's not cause for the
13 Defendant. And he also did not give the Defendant
14 reasonable time to correct the problem. The Defendant
15 did correct the problem, I think, in about three or
16 four seconds.

17 The report also has some major facts
18 omitted. Like the fact that all the evidence -- all
19 the contraband in this case, all of it was packed in
20 these smell proof bags. Yeah, 100 percent smell
21 proof, according to the companies that tested this,
22 this company's product. Incorrect time stamps, etc.
23 That's the basis of the arguments.

24 THE COURT: Okay. Thank you.

25 Let me just double check with you,

1 Mr. Berardi, in terms of procedurally, any objection
2 to my plan of evidence being gathered today, tomorrow
3 if needed, transcript being ordered, and briefing
4 scheduled to follow from from that rather than --

5 MR. BERARDI: No, that's fine.

6 THE COURT: Okay. Rather than Judge
7 Nuffer's typical plan.

8 Ms. Reddish-Day, just some initial thoughts
9 from you.

10 MS. REDDISH-DAY: Your Honor, the summary of
11 the facts is that Officer Tanner stopped the
12 Defendant's vehicle and did so based on two traffic
13 code -- Utah Traffic Code violations. Object hanging
14 in the rear-view mirror that materially obstructed the
15 Defendant's -- the operator's view. The Defendant was
16 the sole occupant of the vehicle he was driving.

17 The second traffic code violation he
18 observed is that the Defendant was following too
19 closely behind another vehicle. He initiated the
20 traffic stop based on those two Utah Traffic Code
21 violations.

22 Almost immediately upon contacting the
23 Defendant at the passenger side window of the vehicle,
24 in which the Defendant was the sole occupant, Officer
25 Tanner was struck with the overwhelming odor of

1 marijuana in the vehicle. He had already called
2 Deputy Montgomery, advising him that he was going to
3 be making the traffic stop.

4 Deputy Montgomery arrived moments later,
5 after Officer Tanner made the traffic stop. Deputy
6 Montgomery also indicated that he smelled the odor,
7 the strong odor of marijuana from the vehicle.
8 Probable cause resulted from that overwhelming odor of
9 marijuana to search the vehicle.

10 The vehicle was, in fact, searched. And
11 there was a large quantity of marijuana, more than
12 24 pounds of raw marijuana. In addition to about
13 19 pounds of methamphetamine, fentanyl pills, and
14 cocaine in that vehicle in an open cargo area in a
15 sport utility vehicle with that cargo area being
16 opened to the driver and passenger compartment of the
17 vehicle.

18 So those are the -- the factual summary of
19 the case. The Defendant was subsequently interviewed
20 by two Federal agents that arrived more than a half
21 hour later to the scene.

22 Once the large load of drugs was located by
23 Officer Tanner and Deputy Montgomery, D.E.A. Agent
24 Marcus Jensen and Homeland Security Investigator TFO
25 Nick Hershey were both called out to the scene to

1 conduct a further investigation and interview the
2 defendant.

3 The defense counsel filed the motion to
4 suppress, alleging the legality -- questioning the
5 legality of the inception and scope of the traffic
6 stop with Mr. Alvarado; the legality of the detention
7 and/or arrest of Mr. Alvarado, and the
8 constitutionality of the interrogation of
9 Mr. Alvarado.

10 It appears today that he is relinquishing
11 his desire to litigate the legality or the
12 constitutionality of the interrogation of
13 Mr. Alvarado. I had that discussion with defense
14 counsel over the phone prior to this hearing, and then
15 also in the courtroom today prior to Your Honor taking
16 the bench.

17 Based on the statements made in his motion
18 to suppress, he asked that four different witnesses be
19 subpoenaed by the United States. We did so based on
20 the fact that we believed he was challenging the
21 inception of the stop, the probable cause to arrest,
22 and the interrogation of the defendant.

23 But to the extent that the defense is
24 abandoning that argument with regard to the
25 defendant's statements, we would ask that the two

1 Federal agents that arrived more than half an hour
2 after the vehicle was searched and contraband was
3 found, we would ask those witnesses be allowed to be
4 released and not have to wait around in the courtroom
5 all afternoon.

6 So I just wanted to clarify the scope of the
7 motion with defense counsel and with this Court. I
8 believe there's no other reason in a motion to
9 suppress to have those two Federal agents here when
10 that is their limited involvement in this case is
11 taking the Defendant's statements.

12 THE COURT: Thank you. That's part of my
13 goal, too, is to narrow the scope as much as possible.

14 Mr. Berardi, any objection to those Federal
15 officers being released?

16 MR. BERARDI: Yes, Your Honor. I told
17 Counsel I wanted them here at least at the beginning.
18 I have questions for at least one of them currently.
19 So yeah, I object to them being released. I asked for
20 them to be subpoenaed, and they were subpoenaed.

21 You know, I will let them go as soon as we
22 can, but I probably will start with them, or at least
23 Hiroshi(sic). So yeah, I object.

24 THE COURT: Okay. Fair enough then. I will
25 just ask that you please, if it becomes apparent to

1 you at some point that they can be released, please
2 let us know as soon as possible.

3 If that changes the order that you'd like to
4 do things, Ms. Reddish-Day, feel free.

5 MS. REDDISH-DAY: Your Honor, if I might
6 impose for a moment. If we could ask defense counsel
7 to proffer for the Court what would be the purpose of
8 the Federal agents testifying in this case if we
9 aren't going to be litigating the constitutionality of
10 the Defendant's statements.

11 Based on defense counsel's representations
12 to me, it appears that he wants to utilize Federal
13 agents that came on the scene far beyond the arrest in
14 order to somehow question the credibility of Officer
15 Tanner. And they weren't even at the scene at the
16 inception of the stop or the search of the vehicle so
17 I think that would be improper.

18 And just simply issue for trial, with
19 regard to the timing of the events subsequent to the
20 arrest, who interviews the Defendant subsequent to
21 his arrest. But I believe the defense counsel wants
22 to attempt to impeach Officer Tanner based on
23 reports of Federal officers that arrived much, much
24 later. So I don't believe that would be proper for
25 a motion to suppress hearing.

1 THE COURT: Mr. Berardi, let's start with
2 your thoughts on the issue regarding interrogation.
3 Has Ms. Reddish-Day correctly summarized your position
4 on that?

5 MR. BERARDI: No, I don't think so. I
6 mean -- I think some of the arguments she made, I
7 think I can use any of those to say that's the reason
8 why I want that officer's testimony. The fact --

12 MR. BERARDI: Am I challenging the statement
13 made you mean by wanting to suppress the statements he
14 made?

15 THE COURT: Yeah.

16 MR. BERARDI: Yes, based -- yes, based on
17 the total of illegality of the stop, yeah.

24 I will say, Mr. Berardi, if you put
25 Ms. Reddish-Day through the paces of proving up and

1 calling witnesses for that, when it becomes clear you
2 are walking away from it, I'm not going to be thrilled
3 about that. So keep this as narrow as possible, but I
4 am not going to send witnesses away that are
5 subpoenaed here today.

6 So I guess what I am trying to get at in
7 part is it sounds like you have had discussions with
8 Ms. Reddish-Day before the hearing today.

9 MR. BERARDI: Yes.

10 THE COURT: Has she mischaracterized in your
11 mind those discussions? And if not, why are we
12 worried about the interrogation?

13 MR. BERARDI: What's the question about the
14 interrogation?

15 THE COURT: Okay. Your motion, you know,
16 challenges evidence that seeks to exclude evidence
17 based on the stop, probable cause to arrest, and the
18 interrogation of your client; is that correct?

19 MR. BERARDI: Yes.

20 THE COURT: Ms. Reddish-Day is suggesting
21 conversations you have had with her before coming here
22 suggest that you are no longer pursuing to suppress
23 statements made by your client.

24 MR. BERARDI: Well, that's not true. I mean
25 that --

1 THE COURT: That's what I am asking you to
2 clarify your position for me, please.

3 MR. BERARDI: As far as this hearing today,
4 I don't think we were going to go into that.

5 THE COURT: Okay, then --

6 MR. BERARDI: To the extent of the
7 statements that my client made. But the fact is is
8 that there was statements and things in the reports of
9 those two officers that I think are relevant to
10 today's hearing. And I think --

11 THE COURT: Based on what? How are they
12 relevant?

13 MR. BERARDI: Because they show at the time
14 that one of these reports -- allegedly in the report
15 it states when they were called to assist on this
16 stop, and where they were requested to go.

17 You know, the two officers have different --
18 one says mile marker eight, one says mile marker 16,
19 and the time I think is 22:00 hours.

20 Which at 22:00 hours, the stop has already
21 occurred, my client is in the backseat of Officer
22 Tanner's vehicle, the vehicle has been searched. And
23 it doesn't line up. It does line up with -- and it
24 also because the stop is already occurring, is over,
25 the fact that one or both of those officers state we

1 are going out to assist on a possible drug delivery or
2 transporting type of -- type of case.

3 And that would have been true earlier on at
4 miler marker eight because they hadn't made the stop
5 yet, and they are anticipating that it's a drug
6 trafficking charge.

7 But at 22:00, it doesn't make sense because
8 the stop has already occurred; the search has already
9 occurred. And it is -- the times don't line up.

10 THE COURT: Okay. Let me just say then,
11 without hearing the facts, as they may come in today,
12 it seems premature to me to release the witnesses at
13 this time.

14 So I am going to deny that request, but I
15 will renew my request to Mr. Berardi to let them go as
16 soon as possible.

17 Anything else we need to do preliminarily
18 before, Ms. Reddish-Day, we have you call witnesses?

19 MS. REDDISH-DAY: Your Honor, I just want to
20 make sure the Court received the Government's amended
21 exhibit and witness list.

22 THE COURT: I have that.

23 MS. REDDISH-DAY: And for purposes of
24 clarification, I would make a motion for admission of
25 those exhibits prior to us beginning.

1 I can certainly lay a foundation for each
2 of those, but I believe it would save some time if
3 Counsel would be willing to stipulate to the
4 admission of those exhibits. They are simply the
5 body cam videos of both Officer Tanner and Deputy
6 Montgomery, the dash cam video of Officer Tanner,
7 and then the five clips of the dash cam video of
8 Officer Tanner are provided for the Court solely
9 because of the fact that there is some glitches in
10 the sound in the full dash cam.

11 At every minute marker in the dash cam,
12 there's a glitch in sound. And so we provided five
13 clips that show a continuous time period from the
14 dash cam being activated to Officer Tanner
15 conducting the stop of the vehicle. And that time
16 span is covered in those five clips, which are also
17 covered in the full dash cam, but the sound is
18 glitchy.

19 So we provided those five clips in order
20 for the Court to be able to see what is happening
21 and also hear what is happening on the dash cam.

22 THE COURT: Okay.

23 MS. REDDISH-DAY: If Counsel is willing to
24 stipulate to those, then we could move for admission
25 of those exhibits ahead of time.

1 THE COURT: All right. Mr. Berardi, any or
2 all of those eight exhibits you are willing to
3 stipulate to admissibility before we get there?

4 MR. BERARDI: Yeah, I think we will
5 stipulate to them all.

6 THE COURT: Okay. Based on the agreement by
7 the parties, I will admit those exhibits. That
8 appears to me it is Exhibits 1, 2, 3, and 3-1 through
9 3-5. Does that sound right, Ms. Reddish-Day?

10 MS. REDDISH-DAY: That's correct. Thank
11 you, Your Honor.

12 THE COURT: Okay. They're admitted. Thank
13 you for doing that.

14 (Government's Exhibits 1, 2, 3, 3-1 through
15 3-5 admitted into evidence.)

16 THE COURT: Anything else we ought to do in
17 advance of witnesses?

18 MS. REDDISH-DAY: I don't believe so, Your
19 Honor.

20 THE COURT: Okay. Very good. You may
21 proceed when you are ready.

22 MS. REDDISH-DAY: The United States calls
23 Officer Nolan Tanner.

24 THE COURT: Officer Tanner, come on up here
25 close to the witness box. Before you jump in there,

1 if you will pause for a minute to be sworn.

2

3 THE CLERK: Please raise your right hand.

4 You do solemnly swear that the testimony you
5 shall give in the case before the Court shall be the
6 truth, the whole truth, and nothing but the truth so
7 help you God?

8 THE WITNESS: I do.

9 THE COURT: Please have a seat. Very good,
10 thank you. I am Judge Kohler. Have a seat there.
11 And give your attention to Ms. Reddish-Day, please.

12 Are you able to fit in the chair there with
13 all your gear?

14 THE WITNESS: Yeah.

15 THE COURT: Okay.

16 THE WITNESS: I'm good. Thank you.

17 NOLAN TANNER

18 called as a witness herein by the Plaintiff,
19 having been first duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. REDDISH-DAY:

23 Q Tip the mic up a little bit so we can hear
24 you. Okay.

25 Good afternoon, Officer. Can you please

1 state your name and spell it for the record.

2 A It is Nolan Steven Tanner, last name
3 T-a-n-n-e-r.

4 Q Okay. And can you just speak up just a
5 little bit.

6 A Yeah, sorry. Can you hear me better?

7 Q You can actually move the microphone a bit
8 closer to you. Great. Thank you. You almost have to
9 be --

10 A Like touching it.

11 Q -- touching it. Can you tell us what is
12 your occupation?

13 A I am a patrol officer assigned to the K9
14 Division for Washington City Police Department.

15 Q And how long have you been so employed?

16 A Seven years now.

17 Q Okay. And can you describe briefly for the
18 Court your training that allows you to become a police
19 officer?

20 A Yep. I completed Utah Post Academy. Upon
21 completion of that, the physical and written tests. I
22 then tested for Washington City Police Department and
23 was hired by Washington City Police Department.

24 And then I completed the field training
25 program. And then once I was completed with that,

1 then I was put on my own.

2 Q Can you describe your duties in general as a
3 Washington City police officer?

4 A Yes. I respond to routine patrol calls,
5 conduct traffic enforcement, things like that. I am
6 assigned to the K-9 Division so my job is a little bit
7 more unique now. I respond to assist other officers
8 with narcotics investigations, any form of violent
9 fugitives or things like that, where a K9 would be
10 used as well.

11 Q Okay. And how long have you been a K9
12 handler for Washington City Police Department?

13 A Approximately five years now.

14 Q Okay. And in order to have that assignment,
15 do you and your K9 partner undergo specific training
16 in that regard?

17 A We do.

18 Q Okay. Can you describe that for the Court
19 briefly?

20 A When we first became a team, we were -- we
21 completed a course up at the Utah Post for narcotics.
22 It is eight weeks long, 40 hours a week.

23 I have to then pass a written test. And
24 then the K9 as well as myself have to pass a
25 practical test to be certified by Utah Post.

1 Q Is there continuing training you have to
2 engage in to maintain your certification to be a K9
3 handler?

4 A That's correct. We are required four hours
5 of minimum training per discipline per week to uphold
6 your certificate through Utah Post. And then we have
7 to complete an annual test as well and complete that.

8 Q And as part of your ongoing training as a K9
9 handler, do you and your K9 partner engage in training
10 with regard to identifying the odor of various
11 narcotics?

12 A We do.

13 Q Okay. And as a K9 handler, do you carry
14 various narcotics with you for training purposes?

15 A We do.

16 Q Okay. And so in that capacity, you are
17 exposed to narcotics on more occasions than a regular
18 patrol officer may be; is that correct?

19 A That is correct.

20 Q Okay. And are you also -- do you also have
21 a drug interdiction assignment?

22 A I do. I am a Task Force Officer for
23 Homeland Security. And my job for them is to
24 specialize in narcotics investigations through them.

25 Q And how long have you been a Task Force

1 Officer for Homeland Security?

2 A A little over two and a half years now.

3 Q Okay. Can you describe for the Court what
4 your duties entail specifically with regard to drug
5 interdiction as a Task Force Officer?

6 A Yeah. So what I -- with the assistance of
7 Homeland Security, I am assigned to work the
8 interstate and to conduct all forms of criminal
9 interdiction on the interstate, but my specialty with
10 them is narcotics.

11 So I try to eliminate the travel of
12 narcotics from point A to the delivery location, and
13 try to intercept it before it gets there.

14 Q Is that primarily on the highway?

15 A Yes.

16 Q Like Interstate 15 specifically that runs
17 through Washington County?

18 A That's correct.

19 Q Okay. And do you receive specific training
20 that allows you to be a narcotics interdiction officer
21 with -- as TFO for Homeland Security?

22 A Yes. I completed an annual training every
23 year for Homeland Security. In addition to that, I
24 have taken several interdiction courses to further my
25 knowledge in interdiction.

1 I also teach interdiction to other
2 agencies through Homeland Security as well.

3 Q And can you describe for the Court, if you
4 can, what interdiction work is specifically?

5 A It is the attempt to intervene between
6 crimes that are -- for this instance, going up I-15.
7 North or south of I-15 before they reach a location.

8 Q Okay. And in your interdiction training,
9 are you taught -- through your training and
10 experience, have you been taught to focus on small
11 details that might not be noticeable to the
12 non-trained law enforcement eye?

13 A I am.

14 Q Okay. Can you describe for the Court some
15 of those details that you are trained to look for when
16 you are doing drug interdiction work on the freeway?

17 A Yes. There's a lot. For examples, a
18 vehicle that's traveling in the number one lane and
19 switches to the number two lane to distance themselves
20 from an officer. That's -- that could be a clue.

1 will look in their side mirror, rearview mirror,
2 look back to see if the officer has noticed their
3 presence. Those are all examples. There's a lot.

4 Q Okay. So those are just some examples of
5 the cues that you are trained to look for that taken
6 individually are innocent cues, but as a trained
7 officer you are looking for those different cues as
8 you are watching vehicles travel on Interstate 15; is
9 that correct?

10 A That's correct.

11 Q Okay. And how many traffic stops would you
12 estimate that you make per week? Not just as a drug
13 interdiction officer, but in general as a patrol
14 officer?

15 A I would say between ten and 20.

16 Q Okay. And I asked you a little bit about
17 your training with regard to a narcotics interdiction
18 and being a K9 handler.

19 Have you become familiar with the odor of
20 marijuana through your training and experience?

21 A I have.

22 Q And are you able to tell the difference
23 between the smell of raw marijuana versus burnt
24 marijuana?

25 A I can, yes.

1 Q Okay. And how would you describe the -- if
2 you can, the odor of raw marijuana?

3 A I have been around marijuana enough that I
4 describe it as the odor of marijuana. But oftentimes
5 I hear people that aren't around it as often describe
6 raw marijuana as a skunk type of odor.

7 Q And how would you distinguish that from
8 burnt marijuana smell?

9 A Burnt marijuana is going to still have the
10 skunk odor but there's going to be a smoke odor mixed
11 in with it.

12 Q And do you just kind of know it when you
13 smell it; is that fair to say?

14 A Yes, that's fair to say.

15 Q Okay. And when you are making decisions as
16 a patrol officer, especially doing drug interdiction
17 on the freeway, are you -- what are you factoring in
18 when deciding where to make a stop on the freeway once
19 you have observed a traffic code violation?

20 A There's a lot of different things. The
21 major thing is safety.

22 If I activate my lights, are they going to
23 make a quick reaction and turn -- and stop right
24 there, or are they going to look for the nearest
25 exit. I try to eliminate their thought process to

1 make it as easiest for them.

2 So when I decide where I am going to stop of
3 a vehicle, I am thinking ahead of multiple different
4 things that may come into play. Is a dog going to be
5 used, a K9 going to be used to sniff the car? If so,
6 we will need a larger area to sniff it.

7 Innocent motoring public, as they are
8 traveling up I-15 or down I-15, are they going to be
9 able to see us in enough time to be able to react
10 and switch lanes. Are we on a bend, is there a
11 barrier between the road and the turnoff where it
12 wouldn't be safe for us to pull over there for
13 officer safety as well as responding units.

14 Is there enough room if I need assistance, can
15 they respond. A tow truck driver, if we end up towing
16 the vehicle, are they able to access the vehicle to
17 tow it.

18 Q Okay. So those are a lot of different
19 factors that you are evaluating. It sounds like
20 safety first; right?

21 A Safety first.

22 Q Is there common areas on Interstate 15 that
23 you will make a traffic stop once you observe a
24 traffic code violation?

25 A That's correct. I primarily work between

1 the mile markers eight and 16. I know that at mile
2 marker eight I'm going to have one pull off, which is
3 going to be Exit 10, if I am able to get to them in
4 time.

5 The next one's going to be 13, if they are
6 able to pull off there. And then 16 is going to be
7 the next one. And then north of 16 there's a large
8 shoulder that I would be able to safely conduct a
9 stop as well.

10 Q Okay. Just so we are clear, because I asked
11 you about different cues that you look for as a drug
12 interdiction officer.

13 You never stop somebody based just on
14 those cues that you see; correct?

15 A That's correct.

16 Q Okay. You're -- as a law enforcement
17 officer, you are trained to only make a traffic stop
18 when you observe a traffic code violation or there's
19 other criminal activity afoot; is that correct?

20 A That is correct.

21 Q Okay. I am going to turn your attention to
22 August 29, 2023. I mean 2022.

23 At approximately 8:40 p.m., approximately,
24 were you on duty at that time?

25 A I was.

1 Q And were you engaged in drug interdiction
2 duties at that time as a Task Force Officer?

3 A I was working for patrol, which is an
4 assignment that I have in patrol for Washington City;
5 but yes, I was.

6 Q Okay. And where were you located about that
7 time in the evening?

8 A I was on Interstate 15 at mile marker eight.
9 My patrol vehicle was facing the northbound direction
10 of travel.

11 Q Okay. So you were parked stationary at mile
12 marker eight?

13 A That's correct.

14 Q Okay. Why -- is that in Washington City or
15 is that in St. George city limits?

16 A That falls in St. George city limits.

17 Q Okay. So why were you in St. George city
18 limits?

19 A So I have a unique job. Like I said, as a
20 K9 handler, I have a little bit more flexibility.
21 Where I sit at mile marker eight, my city starts at
22 mile marker 10.

23 As vehicles pass me, by the time I am able
24 to typically locate them and conduct a traffic stop
25 on them, it is typically in the City of Washington.

1 The City of Washington doesn't have a lot
2 of safe locations for me to sit stationary. There's
3 one location which is mile marker 12 and a half. It
4 is under construction currently, and it is a dirt
5 road versus an asphalt.

6 So it's a little harder for me to safely
7 proceed off the interstate. So my agency is allowed
8 between the miles of eight and 16 as my area that I
9 work.

10 Q Okay. So that's allowable?

11 A Yes.

12 Q Okay. And while you were at mile marker
13 eight, did you observe a vehicle that was traveling
14 northbound on Interstate 15 that drew your attention
15 to it?

16 A I did.

17 Q And what vehicle did you observe?

18 A It was a black SUV. I believe it was a Kia
19 Sorento.

20 Q Okay. And what is it about that vehicle
21 that drew your attention?

22 A There was a couple things that interested
23 me. As I was sitting at mile marker eight stationary,
24 I observed for the vehicle to quickly exit the
25 freeway. I began to watch the vehicle exit the

1 freeway.

2 And as it passed me, I observed a
3 construction vest that was hanging in the back
4 window behind the driver's seat.

5 I also observed as the vehicle was exiting
6 off the off-ramp for him to look through his side
7 mirror to see if I had noticed his presence exiting
8 the freeway.

9 Q Okay. And are those things that you viewed
10 consistent with your training and experience that
11 caused you concern?

12 A They did pique my interest, yes.

13 Q Piqued your interest, okay.

14 And with regard to the construction vest
15 that you observed, what was significant about that?

16 A Just from past experiences I observed large
17 narcotics couriers to commonly have some form of a
18 story built in. Construction vests are popular at the
19 time from what I was seeing. In order for if law
20 enforcement were to stop them, that would be their
21 story is they were working. So it was just something
22 I was seeing that was trendy at the time.

23 Q Okay. And so that combined with the other
24 behaviors that you noticed, it piqued your interest?

25 A That's correct.

1 Q And the driver of that vehicle, the black
2 SUV, exited the freeway?

3 A That's correct.

4 Q At what exit did the vehicle take?

5 A Mile marker eight.

6 Q Is that St. George Boulevard?

7 A That's correct.

8 Q And then you proceeded to follow that
9 vehicle off the exit on to St. George Boulevard as
10 well?

11 A That's correct.

12 Q Okay. And then where did the vehicle travel
13 to once it exited the freeway on to St. George
14 Boulevard?

15 A The vehicle pulled into Maverick at 900 East
16 St. George Boulevard and began getting fuel.

17 Q And 900 East St. George Boulevard Maverick,
18 is it fair to say that's about a block west of
19 Interstate 15?

20 A Yeah.

21 Q Just off Interstate 15?

22 A It is just off Interstate 15.

23 Q On St. George Boulevard, correct?

24 A That's correct.

25 Q Okay. So it is at 900 East and intersects

1 with St. George Boulevard; correct?

2 A Yes.

3 Q Okay.

4 A It actually might be 1,000 East, but
5 somewhere in that area right off the freeway.

6 Q So approximately a block off the freeway,
7 just as you exit the freeway; correct?

8 A Yes.

9 Q Okay. And so you observed the black SUV
10 pull into the Maverick, and then what did you do at
11 that point?

12 A At that point, I parked away from him at a
13 close distance. And I began to monitor the driver of
14 the vehicle.

15 There's other things I look for. Are they
16 actually getting fuel, are they just exiting to
17 avoid me.

18 So I began to monitor the driver to see
19 what he was doing and as well to see how many
20 occupants were in the vehicle, et cetera.

21 Q Okay. So while you are monitoring the
22 vehicle, did you make contact with the driver of the
23 vehicle at that time at the Maverick?

24 A I did not.

25 Q Did you activate your lights or sirens at

1 all at that time at the Maverick?

2 A I did not.

3 Q So you were just simply observing from a
4 distance the driver and the black SUV; is that
5 correct?

6 A That is correct.

7 Q Okay. Did you take any enforcement action
8 whatsoever while at the Maverick?

9 A I did not.

10 Q Okay. Did you communicate with another
11 officer while you were at the Maverick making those
12 observations of the driver and the black SUV?

13 A Yeah. There was another St. George city
14 officer that was just already in the area there. As I
15 was circling the parking lot to position my vehicle, I
16 observed that he was already there prior to the
17 suspect arriving in the area as well as myself.

18 So I pulled up next to him to appear that
19 I was just having a conversation with him as I was
20 monitoring the vehicle as well.

21 Q Okay. And so direction wise, can you
22 explain as best you can what direction you're facing
23 in relation to this subject vehicle that you are
24 monitoring?

25 A We are both facing southbound. And I am

1 parked on the east side of him. And so we are both
2 facing this way and our cars are pointed in the same
3 direction, and we are level with each other.

4 Q And about how far away were you from the
5 subject vehicle?

6 A About 20 to 25 feet.

7 Q Okay. And while you were at that distance
8 away, were you able to make any additional
9 observations about the driver and/or the vehicle?

10 A I observed it was the same vehicle that I
11 had located exiting the freeway. The same
12 construction vest, the orange one, was still in the
13 same location.

14 I also observed for several items to be
15 hanging from his rear-view mirror that I believe was
16 an obstruction from his view at that time. And that
17 he was still the sole occupant and hadn't made
18 contact with anybody.

19 Q Okay. And so still at this point you didn't
20 make any contact with him; is that correct?

21 A That is correct.

22 Q And you did not -- you didn't initiate your
23 overhead lights or sirens at all?

24 A No.

25 Q And can you describe in more detail what you

1 observed with regard to the objects hanging from the
2 rear-view mirror?

3 A I observed just a cluster of items hanging
4 from the rear-view mirror. At the time I couldn't
5 tell what they exactly were. I could just see the
6 size of the items that were hanging dead center of the
7 dash and hanging downwards. But I didn't know what
8 they were at the time, I just knew they were objects.

9 Q Okay. And in your experience as a trained
10 police officer, did you believe those objects were a
11 violation of Utah Traffic Code?

12 A I did.

13 Q And what section would that be a violation
14 of?

15 A 41-6A-1635, I believe.

16 Q Okay. And do you recall what that provision
17 provides for?

18 A Yeah. I believe it states that a vehicle
19 may not have any devices or material hanging from the
20 rear-view mirror that may cause an obstruction of the
21 operator of the vehicle.

22 Q Okay. And so based on your observations,
23 did you believe that those objects that you saw
24 hanging from the rear-view mirror did cause an
25 obstruction to the driver?

1 A I did.

2 Q Okay. And what did you do at that time once
3 you made that observation?

4 A The vehicle -- so the vehicle was on private
5 property. I am not able to conduct a simple traffic
6 infraction, traffic stop on a vehicle on private
7 property. So I knew they needed to exit on to public
8 property.

9 At this time, he still could have removed
10 the objects prior to exiting onto public property
11 and then there wouldn't be a violation. So he began
12 to proceed out of the parking lot in a congested
13 area. And I observed for the items still to be
14 hanging from the rear-view mirror and for him not to
15 remove them prior to entering public property.

16 And then as he entered on to public
17 property, or public roadway, sorry, I then began to
18 try to catch up to the vehicle to conduct a traffic
19 stop on the vehicle.

20 Q Okay. I am going to ask you a couple more
21 questions about that.

22 But before I do, do you recall about how
23 long you were at the Maverick making observations of
24 this vehicle and the objects hanging in the rear-view
25 mirror?

1 A Rough estimate, three to five minutes; but
2 that's an estimate.

3 Q Okay. And by the time the subject vehicle
4 left the Maverick parking lot, you had never initiated
5 a law enforcement contact at that point; is that
6 correct?

7 A That is correct.

8 Q Okay. So when he left the parking lot, you
9 followed; is that correct?

10 A That is correct.

11 Q Were you a distance behind him?

12 A I was stuck in traffic trying to catch up,
13 yes.

14 Q Okay. And then what direction did the
15 subject vehicle travel?

16 A He began to head back towards I-15 to go
17 northbound.

18 Q Okay. And so in doing so, he would have to
19 cross over the freeway to get on to the northbound
20 exit; is that correct?

21 A Yes. He would have to go over the overpass,
22 and then enter on to I-15 to go north.

23 Q Okay. And did you follow that same path of
24 travel?

25 A I did.

1 Q But from a distance behind?

2 A Trying to catch up, yes.

3 Q Okay. Was there a number of cars in between

4 you and the subject vehicle?

5 A There was.

6 Q But you were able to still keep eyes on him

7 as he entered the freeway; is that correct?

8 A Yeah. I lost sight of him as he was

9 entering on the freeway, I was a couple cars behind.

10 At that point, I knew that the only place

11 he could go from there would be Exit 10. And I was

12 able to catch up to him about Exit 10 and observe

13 him not to exit the freeway.

14 Q Okay. So you had observed the traffic code

15 violation of the objects hanging from the rear-view

16 mirror as he left the Maverick parking lot.

17 Why did you not initiate a traffic stop at

18 that time?

19 A I wasn't in a position where I could. There

20 was cars between us. He was a distance ahead of me.

21 So I just had to catch up to the vehicle. Yeah, so

22 that's why.

23 Q Okay. Is it also a relatively congested

24 area crossing the overpass to get on to the freeway?

25 A Yes.

1 Q Okay. Is that a place where you would
2 normally make a traffic stop?

3 A It's not normal. If I am able to catch up
4 to him in a timely manner and find a safe location off
5 the shoulder, then I would. It is not somewhere I
6 could even recall the last time I did stop a car
7 there, if I even have.

8 Could I? Yeah, if I was close enough to
9 him and it was safe; but I can't make that
10 assumption because at that time I wasn't in a
11 position to be able to make that stop.

12 Q Okay. And going back for a moment to the
13 objects hanging from the rear-view mirror, you saw
14 them from -- I believe you said 20 to 30-foot
15 distance; correct?

16 A Yeah.

17 Q Did they -- were they exceeding below
18 four inches below the top of the windshield --

19 A Yes.

20 Q -- those items? Okay. Were they also --
21 one second.

22 Were the objects also hanging below the
23 AS1 line of the windshield as well?

24 A Yes.

25 Q And can you describe where the AS1 line is?

1 A Yes. So the AS1 line is four inches below
2 the top of the front windshield. The rear-view
3 mirrors on vehicles are positioned in the location
4 level with AS1 lines for a reason. Because that is
5 what they deemed as anything below that obstructs the
6 view.

7 So that's why the rear-view mirror will be
8 level with the AS1 line so anything below that would
9 be below the AS1 line as well.

10 Q Okay. And so when you observed the vehicle
11 get back on to Interstate 15, then you followed;
12 correct?

13 A That's correct.

14 Q And then what did you do next?

15 A At that point, I began to catch up to the
16 vehicle. There was a semi truck in the number two
17 lane. There was a pickup truck directly in front of
18 me in the number one lane. And then directly in front
19 of the pickup truck was the suspect vehicle, a black
20 SUV.

21 And then directly in front of the suspect
22 vehicle was a white passenger vehicle. And we are
23 all traveling in the number one lane of travel at
24 this time, often known as the fast lane that people
25 understand it as. At that point, we were about mile

1 marker 11, 12-ish, and we are continuing northbound
2 on I-15.

3 And I am -- yeah, I'm getting in a
4 position to stop the vehicle at this point.

5 Q Okay. But at that point, at mile marker --
6 would you say 10, 11, 12?

7 A Uh-huh, (affirmative).

8 Q Right in there, you didn't initiate a
9 traffic stop at that time; correct?

10 A That's correct.

11 Q So you are at the rear of a line of vehicles
12 with being a white vehicle, the subject vehicle behind
13 it, the track behind the subject vehicle, and then
14 your patrol vehicle; is that correct?

15 A That's correct.

16 Q Traveling in the fast lane?

17 A Yes. And then there's a semi on the right
18 of us as well.

19 Q Okay. And so at that point, had you decided
20 you were going to initiate a traffic stop?

21 A I was going to initiate the traffic stop for
22 the front windshield violation. But upon monitoring
23 it and attempting to locate a safe spot to stop the
24 suspect vehicle, I also observed a second violation
25 for following too closely.

1 Q Okay. Can you describe for the Court what
2 that observation was specifically that you observed as
3 you were following?

4 A Yes. So it was 41-6a-711, following too
5 closely, reasonable.

6 In front of the suspect vehicle is the
7 white passenger vehicle. As they are traveling in
8 the number one lane, I am behind the pickup truck.
9 I began to position my vehicle to the left of the
10 pickup truck so I can see out the driver's side of
11 my front windshield.

12 At this point, I am crossed over into the
13 shoulder so I can see all three vehicles in front of
14 me. I observed that the distance between the pickup
15 truck and the suspect vehicle are at a greater
16 distance than the suspect vehicle is from the white
17 passenger vehicle. I started getting concerned that
18 he is following too closely to the white passenger
19 vehicle.

20 At that point, I start counting the two
21 seconds in my head based off the guardrail that
22 we're approaching as a fixed object. I began one,
23 one thousand; two, one thousand. And in that
24 timeframe I noticed between the white passenger
25 vehicle passing that fixed object and the suspect

1 vehicle is less than two seconds is what I've
2 estimated.

3 So I determined I am going to also stop
4 the vehicle for following too closely as well as a
5 front windshield obstruction.

6 Q Okay. And so you are talking about counting
7 to two seconds. Why are you doing that; is that what
8 the code provides?

9 A Yes, the code provides -- 41-6a-711, states
10 that the operator of a motor vehicle may not follow at
11 a distance unreasonable or prudent based off of speed
12 of vehicles as well as a two-second time lapse should
13 proceed between the two. And that is the code that I
14 was going off of for the vehicle.

15 Q Okay. So vehicles in following too
16 closely -- or vehicles need to follow at a distance
17 that's safe, correct?

18 A Correct.

19 Q And in order for officers like you to
20 determine, to help determine what is safe, there's
21 also a specific timeframe that's provided in the Utah
22 Code for you to follow. And that's two seconds
23 between when one vehicle passes a fixed point to when
24 the next vehicle passes that same fixed point; is that
25 a fair assessment of that?

1 A Yes. It states a minimum of two seconds.

2 Q Okay. So that as a trained officer you are
3 trained to count two seconds in order to gage whether
4 or not a vehicle is following too closely?

5 A That's correct.

6 Q And what is your -- your general practice in
7 doing so? Do you -- have you made a number of stops
8 for that same violation of other vehicles traveling on
9 the freeway?

10 A I have.

11 Q And are you considering the speed that the
12 vehicles are traveling on the freeway when making that
13 assessment?

14 A Yes. I am considering a lot of different
15 factors. Speed, weather conditions, size of vehicle,
16 all those go into effect as well based off of how long
17 it would take that vehicle to stop. And that's what I
18 am basing it off of.

19 Q Okay. But the counting, the counting two
20 seconds is in essence factoring in the speed of those
21 vehicles as well; correct?

22 A Correct.

23 Q Okay. And so your practice is to find a
24 fixed point; is that correct?

25 A That is correct.

1 Q And then you begin counting?

2 A As the vehicle in front passes it, then I
3 begin my counting to see if the suspect vehicle or the
4 vehicle I am in interest of possibly stopping crosses
5 before the two seconds was up.

6 Q Okay. And by counting, you -- is it your
7 practice to count one, one thousand; two, one
8 thousand?

9 A That is.

10 Q Okay. And what pace do you do that count?
11 Can you provide that to Court, what's the pace that
12 you do that?

13 A One, one thousand; two, one thousand.

14 Q Okay. And then if the second vehicle passes
15 that same fixed point before you reached two, one
16 thousand, then do you determine that's a violation of
17 Utah Code?

18 A I do.

19 Q Okay. So then in this case, you observed
20 the subject vehicle traveling behind a white vehicle
21 and you engage in that same process; is that correct?

22 A That's correct.

23 Q And what did you use as your fixed point to
24 do your counting?

25 A It is the last post on the guardrail that I

1 used. There's a metal guardrail on the left shoulder
2 of the inside lane. We're in the number one lane so
3 we are driving close to that guardrail. So it is easy
4 for me to see taillights as they pass it. So that's
5 what I am using as my fixed object.

6 Q Okay. And you made these observations of
7 the subject vehicle that it was -- well, first of all,
8 let me ask you:

9 For how long, if you can estimate, did you
10 observe that violation to occur? How long do you
11 believe the subject vehicle was following too
12 closely the white vehicle in front of it?

13 A What I observed was for at least a couple
14 miles. When I started gauging it is between
15 approximately mile marker 12 and 14, in that area.
16 And that's when I started counting it and I do it
17 twice in my head. And the second time is when I
18 determined okay, he is following too closely.

19 Q So you went through the counting exercise
20 more than once?

21 A Yes.

22 Q Okay. You went through that twice?

23 A Right.

24 Q Okay. To ensure that you were finding --
25 you were, in fact, finding a traffic violation?

1 A That's correct.

2 Q But again, you had already made the decision
3 you were going to stop this vehicle at a safe
4 location, correct?

5 A That is correct.

6 Q Based on the obstruction in the windshield?

7 A That is correct.

8 Q Okay. And had you already decided where you
9 were going to be stopping the vehicle prior to you
10 observing the following too close violation?

11 A Yeah, I did. My -- there's locations, like
12 I said, I have memorized that I frequently stop
13 vehicles at where I know it is a safe location.

14 Also, with based off of how travel is
15 right now, like I said, I have a semi on my right, I
16 have a vehicle in front of me that I need to get out
17 of the way before I can even activate this stop.

18 And then the suspect vehicle.

19 So I am shooting ahead of my next safe
20 location. And that area was around between the mile
21 markers of 15 -- or 15 and a half and 16 and a half,
22 anywhere in those locations is where I was going to
23 determine the stop.

24 Q Okay. So is it fair to say there was some
25 delay between when you observed the first traffic code

1 violation at the Maverick in St. George and where you
2 ultimately were deciding to make the traffic stop?

3 A Yes.

4 Q And that's how many miles?

5 A Between where I observed Exit 8 and where he
6 was stopped at 16 would be eight miles.

7 Q Okay.

8 A But between where I had located him at on
9 I-15 is going to be a little north of 10. So
10 depending on that, but it would be ten to 16 as we
11 were traveling together on I-15.

12 Q Okay. And is that uncommon for you to
13 follow a vehicle for that long before initiating a
14 traffic stop?

15 A No.

16 Q Once you have already seen a violation?

17 A No.

18 Q Okay. And why is that?

19 A Because I have to put in a lot of different
20 factors on where I am going to stop the vehicle as I
21 explained. Safety, things like that as well.

22 Q Okay. So when did you initiate the traffic
23 stop, at what point?

24 A I began calling out the traffic stop about
25 mile marker 15 to my dispatch. I have a standard

1 procedure, I call out the traffic stop. Once dispatch
2 acknowledges my traffic stop, I activated my body cam.
3 And the third thing I am doing is activating my
4 emergency lights and sirens.

5 And so that all took place about mile
6 marker 15. The vehicle came to a stop about mile
7 marker 16 just past the 16 off ramp.

8 Q Okay. And the 16 off ramp is the Hurricane
9 exit?

10 A Correct.

11 Q So you stopped the vehicle just beyond the
12 exit ramp; is that correct?

13 A That's correct.

14 Q Okay. And when you first initiated, did you
15 initiate lights and siren or just lights?

16 A Just lights.

17 Q And did the subject vehicle proceed to the
18 shoulder of the roadway?

19 A He did.

20 Q Immediately?

21 A Yeah.

22 Q Okay. And what did you do next?

23 A At that point, I exited my patrol vehicle
24 and began making contact on the vehicle on the front
25 passenger side.

1 Q And when you did so, was the front passenger
2 window rolled up or down?

3 A I don't remember. It was rolled down by the
4 time I walked up there. I don't know if it was in the
5 process of rolling down.

6 I have a standard way of things. When I
7 walk up on a car, I clear from back to front to make
8 sure that somebody is not in a back area of concern,
9 things like that. So I began shining my light on
10 the cargo area of the vehicle. And then I work up
11 to the front -- or the middle row, and then
12 ultimately to the driver area to make contact with
13 the driver. By the time I made those assessments,
14 the window was down.

15 Q Okay. So let's talk about before you get to
16 the window. Let's talk about what observations you
17 made as you were approaching the passenger side
18 window.

19 What observations did you make?

20 A I observed in the cargo area of the vehicle
21 to have several cardboard boxes, large cardboard boxes
22 that were taped as well as backpacks and duffel bags.

23 Then as I approached the middle row of the
24 vehicle, I observed it did not have any occupants,
25 it to be clean. And then as I approached the front

1 passenger window, I observed for just the sole
2 driver of the vehicle.

3 Q Okay. And the -- what -- the observations
4 you made of the large boxes and bags, did that -- did
5 you add that into the equation that piqued your
6 interest from earlier?

7 A Yes, it did.

8 Q How so?

9 A So commonly what I have investigated and
10 seen through training and experiences is cardboard
11 boxes, especially large cardboard boxes that are taped
12 up are oftentimes used to conceal narcotics, large
13 sums of narcotics.

14 By seeing that, I was interested in that
15 as possibly being a large sum of narcotics in the
16 vehicle already. And then at that point, I began
17 contact with the driver.

18 Q Okay. And that was also combined with --
19 were you able to see the construction vest hanging in
20 the vehicle as well?

21 A I did. I observed a single construction
22 vest to be in the same location I originally saw it.
23 And the only tool that I observed was a single DeWalt
24 drill.

25 Q Okay. So you approached the passenger side,

1 is that your practice to do so when you're on the
2 freeway?

3 A Yes.

4 Q Is that for safety reasons?

5 A It is.

6 Q And what are the first observations you made
7 once you got to the passenger side?

8 A At that point, I could smell a strong odor
9 of marijuana coming through the interior of the
10 vehicle as I was speaking to the driver.

11 And I began to inform the driver the
12 reason behind the traffic stop.

13 Q Did you make any other observations?

14 A I observed that the items that I originally
15 observed hanging from the rear-view mirror to be a
16 gold necklace, chain style. And then a facial
17 covering mask.

18 Q When you say a facial covering mask, like
19 similar to the masks that people wore during the COVID
20 epidemic?

21 A That's correct.

22 Q Or pandemic.

23 A Yeah.

24 Q Okay. And those objects were hanging from
25 the rear-view mirror?

1 A Yes.

2 Q Okay. So once you approached the vehicle on
3 the passenger's side, did that -- did you confirm what
4 you had already -- did the objects appear to be
5 similar or the same as what you had observed at the
6 Maverick down in St. George?

7 A Yes.

8 Q Okay. But you were able to see them more up
9 close; is that fair to say?

10 A That is correct.

11 Q Okay. And were those objects -- did you
12 form an opinion while up close with those objects that
13 those objects were materially obstructing the driver's
14 view or not?

15 A I did.

16 Q You did form an opinion?

17 A Yeah. I believe that they were.

18 Q Okay. And did you -- so you said you
19 advised the driver of the reason for the stop,
20 correct?

21 A That's correct.

22 Q And in doing so, what were the reasons that
23 you advised him?

24 A I informed him that I had stopped him for
25 the front windshield obstruction violation for the

1 mask and the chain. He looked at them, and I don't
2 remember what he said. It was an acknowledgement.

3 And then I also informed him that the
4 vehicle in front of him, the white passenger vehicle
5 that was driving slow that he was traveling too
6 close at an unsafe distance. And then he stated he
7 understood as well and acknowledged that.

8 Q But by the time you advised him of why you
9 were making the stop, had you already smelled the odor
10 of marijuana coming from the vehicle?

11 A Yes. The odor was present instantaneously
12 as when I was walking up on the vehicle.

13 Q How would you describe that marijuana odor?
14 As a light marijuana odor, strong, how would you
15 describe it as best you can?

16 A It was a very strong odor of marijuana. Raw
17 marijuana.

18 Q Of raw marijuana?

19 A That's correct.

20 Q And did you have any doubt in your mind that
21 there was raw marijuana in that vehicle based on this
22 smell?

23 A I did not.

24 Q Okay. Did you at the time that he was still
25 in the driver's seat of the vehicle and you were

1 advising him of the reason for the stop, did you
2 advise him of the fact that you smelled marijuana at
3 that time?

4 A I did not confront him about the odor of
5 marijuana until we had asked him to get out of the
6 vehicle.

7 Q Why is that?

8 A There's a lot of different factors. First
9 and foremost is safety. I don't want him to be
10 overwhelmed that I know -- essentially I know what he
11 is doing or what he is possibly doing.

12 I always try to keep them calm, even if I
13 believe that they may be smuggling a large sum of
14 narcotics because I don't want them to flee, tamper
15 with the evidence, or possibly fight, things like
16 that.

17 So I usually do not inform them until I
18 have them safely out of the vehicle before I inform
19 them of why I want them out of the vehicle.

20 Q Because he is still in the driver's seat so
21 it's possible he could drive away if you informed him
22 that you observe that smell, correct?

23 A That is correct.

24 Q Okay. Did you advise him that you would be
25 giving him a warning?

1 A I did, for the traffic violations.

2 Q Okay. Why did you advise you would only be
3 giving him a warning?

4 A It goes back to what I originally stated.

5 I'm trying to keep him calm. I don't want him
6 stressed out that he's going to get a citation. I
7 want him to -- at this point, I have turned my
8 investigation from a simple traffic stop to a criminal
9 investigation.

10 So I know what the goal is at the end of
11 the day is I am going to be searching his vehicle
12 based off the odor of marijuana. So if I can keep
13 him as calm as possible and think that there's a
14 possibility he just gets a warning citation, I am
15 hoping that that will eliminate the possibility of
16 him wanting to flee, fight, or anything like that.

17 Q Okay. So then what did you do next after
18 you advised him of the reason for the warning that you
19 were about to give him? What did you do next?

20 A So he had provided me his driver's license.
21 I asked him if he would be willing to come sit in the
22 front seat of my patrol vehicle. I explained to him
23 so I didn't have to walk back and forth.

24 But it also goes back to I am trying to
25 separate him from the vehicle, knowing that I now

1 have a criminal investigation. If I can get him out
2 of the vehicle, that's the number one goal. He said
3 he didn't want to and he wanted to stay in the
4 vehicle. And I told him that was totally fine.

5 And at that point I began to return to my
6 patrol vehicle with his driver's license to do a
7 records check.

8 Q So did his driver's license identify him as
9 Adrian Alvarado?

10 A It did.

11 Q And do you see Mr. Alvarado in the courtroom
12 today?

13 A I do.

14 Q And can you point to him in the courtroom?

15 A Yes, he is wearing orange sitting at the
16 defense table.

17 MS. REDDISH-DAY: May the record reflect
18 that Officer Tanner has identified the Defendant.

19 THE COURT: It may.

20 BY MS. REDDISH-DAY:

21 Q And is Mr. Alvarado, he was in fact the
22 driver of that vehicle that day?

23 A That's correct.

24 Q And so you began to walk to your patrol
25 vehicle to begin working on the warning citations; is

1 that correct?

2 A That is correct.

3 Q Prior to that, had you already called out to
4 another officer to respond?

5 A I did.

6 Q And when did you call the other officer to
7 respond?

8 A I was in contact with them via telephone at
9 about approximately mile marker 11-ish. But it was
10 prior to the traffic stop when I was catching up to
11 the vehicle?

12 Q And why did you advise the other officer
13 prior to the traffic stop rather than waiting until
14 the traffic stop was happening?

15 A Based off of my training and experiences, I
16 believe that there was a possibility that I would be
17 investigating a large sum of narcotics being seized
18 out of this vehicle.

19 In case that was going to be the situation
20 on this one, I wanted assistance with another
21 officer at least responding to the area for officer
22 safety as well as to assist with it.

23 Q Okay. And so you were in contact -- was
24 that Deputy Montgomery that you called to the scene?

25 A That is, yes.

1 Q And you were in contact with him while you
2 were traveling up the freeway before you initiated the
3 traffic stop; is that correct?

4 A That is correct.

5 Q And then when did Deputy Montgomery arrive?

6 A As I was returning to my patrol vehicle, he
7 was actually already arrived and he was walking
8 towards me.

9 We ended up meeting at the front of my
10 patrol vehicle, heading the opposite directions. So
11 he arrived prior to me even being able to begin the
12 records check or a citation process.

13 Q Okay. And as he arrived, and -- were you
14 able to brief him on what you had?

15 A Yeah. I informed him that there was a
16 strong odor of marijuana coming from the vehicle, that
17 we would be searching the vehicle.

18 But prior to doing that, I warned him I
19 wanted to conduct a records check on the driver of
20 the vehicle. I knew at this time that the driver of
21 the vehicle was not the registered owner of the
22 vehicle; he informed me it was his cousin's vehicle.

23 So my still first priority was officer
24 safety. I wanted our dispatch to know that I was
25 out with this individual, not the registered owner

1 of the vehicle. So I conducted a records check
2 of -- sorry, a records check of the driver.

3 And as that was in process, I asked for
4 Deputy Montgomery to start by getting Adrian out of
5 the vehicle so we could continue the investigation.

6 Q And you also advised Deputy Montgomery when
7 he arrived at the scene that you smelled the odor of
8 marijuana; is that correct?

9 A That is correct.

10 Q Okay. And then at some point, then did you
11 get in your patrol vehicle to begin the warning
12 process?

13 A No. At that point I was moving on from the
14 simple traffic citation and into a criminal episode.

15 And so what I did is I think I put his
16 papers in the car, and then I gave dispatch his
17 driver's license number to begin the records check.
18 And then I also began to approach Adrian to
19 investigate the narcotics.

20 Q Okay. Did you ask Deputy Montgomery to get
21 Mr. Alvarado out of the vehicle?

22 A I did.

23 Q Was the purpose of that so you could engage
24 in a search of the vehicle?

25 A That is correct.

1 Q Based on the odor of marijuana?

2 A That is correct.

3 Q And so when Mr. -- did Mr. Alvarado
4 willingly get out of his vehicle?

5 A Yeah. I wasn't there when Deputy Montgomery
6 asked him to get out of the car. As I had began
7 approaching the vehicle, Deputy Montgomery was walking
8 towards the rear of the vehicle and Mr. Alvarado was
9 walking around the front of the vehicle.

10 So I don't think there was any contest of
11 him getting out of the vehicle because it was too
12 quick for him to do that to my knowledge. And then
13 as he walked around the front of the vehicle, I
14 informed Montgomery he was walking around the front
15 of the vehicle and then that's when we made contact
16 with him at the front of the vehicle.

17 Q And when you made contact with Mr. Alvarado
18 at the front of the vehicle, Deputy Montgomery was
19 with you at that time; correct?

20 A That is correct.

21 Q Okay. And was the Defendant detained at
22 that point?

23 A Yes, he was.

24 Q Okay. And was he handcuffed?

25 A No.

1 Q And what was -- what was your purpose at
2 that time for detaining him?

3 A We were going to investigate the narcotics
4 investigation based off the odor of marijuana in the
5 vehicle.

6 Q Okay. And did you provide Mr. Alvarado his
7 Miranda rights?

8 A I did.

9 Q Okay. While he was detained on the side of
10 the roadway; is that correct?

11 A That's correct.

12 Q And in doing so, did you provide him his
13 Miranda rights from your memory or from a card that
14 you read from?

15 A From memory.

16 Q Okay. And can you provide the Court with
17 how you Mirandized Mr. Alvarado?

18 A Yes. You have the right to remain silent,
19 anything you say can and will be used in this court of
20 law. You have the right to an attorney. If you
21 cannot afford an attorney, one will be provided by the
22 State. During questioning at any time, if you would
23 like to seek counsel and stop answering questions, you
24 have the right to do so. Do you understand your
25 Miranda rights.

1 Q Okay. And did Mr. Alvarado indicate to you
2 in some fashion that he understood his rights?

3 A He acknowledged by making a head gesture of
4 yes.

5 Q Okay. And did he agree to talk to you?

6 A Yes.

7 Q Okay. And did he make some statements to
8 you at that time?

9 A He did.

10 Q And was he -- so again, he wasn't handcuffed
11 at that point?

12 A No.

13 Q But was he free to leave?

14 A No.

15 Q Okay. And then after you had -- did you
16 have a brief or a lengthy conversation with him
17 roadside; you and Deputy Montgomery?

18 A I would say it was brief. Just maybe a
19 minute before the search of the vehicle took place.

20 Q Okay. Was that your primary focus at that
21 time was to begin the search of the vehicle?

22 A Yes.

23 Q Okay. And so then did you do so with Deputy
24 Montgomery?

25 A Yes.

1 Q Where was Mr. Alvarado when you searched his
2 vehicle?

3 A He was at the front and off to the right so
4 that I could focus off on him while searching the
5 front passenger area as well as Deputy Montgomery have
6 a visual of him off to the right in the desert as
7 well.

8 Q Okay. So off the side of the roadway in the
9 grassy area off the side of the highway?

10 A Yeah, the desert.

11 Q Okay. And so who began the search of the
12 vehicle? Was it you or Deputy Montgomery?

13 A I would say I technically began the search
14 of the vehicle at first because I was closest to the
15 area that I was going to search, which was the front
16 passenger door of the vehicle.

17 But Deputy Montgomery was not very far
18 behind on searching the cargo area of the vehicle.

19 Q And then what, if anything, happened next?
20 Or what happened next?

21 A So as I began searching the vehicle,
22 Mr. Alvarado asked me if I was going to get a warrant
23 for the vehicle.

24 I told him no, based off the odor of
25 marijuana being present. Deputy Montgomery was

1 searching the cargo area of the vehicle and he had
2 informed me that he had located a large sum of
3 narcotics really quickly in the cargo area of the
4 vehicle.

5 Q And how did Deputy Montgomery indicate to
6 you that he had found narcotics in the vehicle?

7 A So we have a phrase that we use, and it
8 means that we have located a large sum of narcotics.
9 And the phrase is bang-bang.

10 So as soon as one of us say that, then we
11 know that that's our word that we are going to go
12 handcuff the suspects because a large sum has been
13 located. And that's what he stated to me.

14 Q And so when Deputy Montgomery said
15 bang-bang, then was the defendant then placed under
16 arrest at that time?

17 A At that point, I approached Mr. Alvarado,
18 and I requested for him not to fight, and I placed him
19 in handcuffs. And informed him that we'd talk to him
20 more about it, that we located a large sum of
21 marijuana in the vehicle.

22 Q And why is that, the code words bang-bang
23 used when you are on roadside?

24 A Oftentimes I don't want them to know if they
25 are out in the desert because we don't always handcuff

1 people based off just a search of the vehicle. I
2 don't want them to know that we have found drugs in
3 the vehicle. If we start saying drugs, things like
4 that, then it is a higher possibility that person
5 knows what we are doing versus they have no clue that
6 we located it and find them -- and then approach them,
7 sorry.

8 So it just gives us a little bit of
9 advantage that they don't know we have located what
10 we were looking for to deter them from fleeing or
11 fighting.

12 Q Okay. And so what was located in the cargo
13 area of that SUV that the Defendant was driving?

14 A There was a large amount of narcotics.
15 There ended up being 24 pounds of marijuana, 400
16 individual THC carts, 19 approximately pounds of
17 methamphetamine, just short of one pound of fentanyl
18 pills, and just short of one pound of cocaine.

19 Q Okay. And those varieties of narcotics were
20 found in what sort of -- let's start with the
21 marijuana specifically.

22 Where was the marijuana located, the
23 approximately 24 pounds of marijuana that you
24 located?

25 A In the large cardboard box that was taped.

1 There was -- the bulk amount of marijuana was located
2 in that box.

3 Then there was a second cardboard box
4 where another large amount of marijuana was located.
5 And then there was also marijuana kind of
6 sporadically located in the cargo area in duffel
7 bags and backpacks that concealed the majority of
8 the other narcotics.

9 Q And as you were at the cargo area of the
10 vehicle, did the smell of marijuana increase or not?

11 A Yes, it did. Once we had lifted the latch
12 of the cargo area of the vehicle, the air flow was
13 coming directly at us, especially as vehicles move up
14 and down I-15, it blows a lot of air through there.

15 So the marijuana at that point was -- we
16 were directly in source of the odor of the marijuana
17 so it was stronger at that point.

18 Q And was there any barrier in the cargo area
19 between the cargo area and the passenger compartment
20 of the vehicle where the Defendant would have been
21 driving the vehicle?

22 A No. There's no barriers.

23 Q No barrier between the cargo area and where
24 you were at the passenger side window of that vehicle?

25 A No.

1 Q Okay. So it wasn't as if the marijuana was
2 located in a locked trunk; correct?

3 A No.

4 Q Okay. And then you and Deputy Montgomery
5 were still the only two responding officers at that
6 scene conducting a search of the vehicle; is that
7 correct?

8 A That's correct.

9 Q And then what did you do next once you
10 located that large sum of narcotics and marijuana that
11 you located, what did you do next?

12 A Once we located it, like I said,
13 Mr. Alvarado was handcuffed. Deputy Montgomery had
14 secured him in my patrol vehicle. So now we didn't
15 have to -- we can put all our focus in the search of
16 the vehicle and continue that investigation.

17 Once he was secured in there, I began
18 contacting first our local Drug Task Force guy that
19 works for Washington City. He wasn't able to
20 respond, but he began making calls to individuals
21 that were going to be able to respond to us and to
22 assist in the interviews and the furthering of the
23 investigation.

24 Q Okay. Is that the standard protocol when
25 you are doing drug interdiction investigations?

1 If you find a large load of narcotics, do
2 you call in investigators to continue the
3 investigation for you?

4 A Yes.

5 Q Okay. When does your job generally cease
6 when you are conducting these type of investigations
7 roadside?

8 A That's a case-to-case basis, just because if
9 I am working for Homeland Security on a shift for
10 them, I run a lot of my cases myself through and
11 through.

12 If I am working for patrol, then typically
13 I contact Drug Task Force. Drug Task Force will
14 come out and depending on what I want to do, but a
15 lot of times they will take over the interviews and
16 the follow-up, and furthering that investigation to
17 that organizations that may be involved and things
18 like that.

19 Q Okay. So specifically to this situation,
20 you reached out to the Task Force as you normally
21 would do, correct?

22 A Correct.

23 Q And your understanding is that the Task
24 Force then reached out to Federal agents; is that
25 correct?

1 A That's correct.

2 Q And what was the purpose of you wanting a
3 Task Force officer or a Federal agent there at the
4 scene?

5 A To assist with the investigation. It's a
6 lot of work that comes with it. There's a lot of
7 things that on the back end of cell phone warrants,
8 things like that, further investigations.

9 And then there's always a possibility of
10 cooperation with suspects. There's a possibility of
11 furthering this investigation to a possible
12 delivery. So all those things are coming into
13 factor for this. And so I wanted them to be
14 notified so that they would have the ability, if
15 they wanted to, to possibly do those things.

16 Q And is one of the purposes also to
17 potentially conduct interviews with the subject if the
18 subject is willing to do so?

19 A Yes.

20 Q Okay. And why do you not engage in a
21 detailed interview at the scene, rather than calling
22 out Federal agents to do so?

23 A Typically it is because they need to have an
24 understanding of what is going on. They can allot
25 more time to that while I am doing other things such

1 as continuing the search of the vehicle, collecting
2 the evidence.

3 I have to have a vehicle towed oftentimes.
4 So I have my own things that I have to get done. So
5 they just assist on eliminating a lot of those tasks
6 that I would have to do by myself by doing
7 interviews and furthering it.

8 Q Okay. And how long do you think, if you
9 recall, how long it took you to do a full and complete
10 search of this vehicle?

11 A This vehicle was a lot easier than normal.
12 But I would say 30 minutes tops. Maybe 35, around
13 there.

14 Q Okay. And you also searched some door
15 panels and things of that nature; correct?

16 A Correct.

17 Q And do you recall -- if you recall, how long
18 it took for agents to arrive to assist you with the
19 further investigation that you just described?

20 A I don't recall. I don't even recall which
21 one showed up first, to be honest, of the two agents.
22 But it was before we were completed with the search.
23 So it would be within the 30-minute time lapse is when
24 the first agent would have showed up and began running
25 with the investigation on the back end.

1 Q And who were the agents that did show up?

2 Even though you don't recall which one arrived first,
3 who were the agents that did arrive?

4 A Marcus Jensen with the Drug Enforcement
5 Agency was one of the agents. And then Nick Hershey
6 with Homeland Security Investigations also assigned to
7 the Drug Task Force was the second agent that arrived.

8 Q So two different Federal agents arrived
9 after the search of the vehicle -- or at least 30
10 minutes after you began the search of the vehicle?

11 A Yeah, within that 30-minute timeframe. I
12 don't know if it was after or before that.

13 Q Okay. And in your vehicle, your patrol
14 vehicle, is your patrol vehicle equipped with a dash
15 camera?

16 A It is.

17 Q Okay. And was it operational on that day?

18 A It was.

19 Q And have you viewed that dash camera footage
20 in preparation for your testimony today?

21 A I have.

22 Q Can you describe -- before we play any
23 footage from the dash camera, can you describe for the
24 Court how the dash camera works as far as when it is
25 activated and when it starts recording?

1 A So the dash camera is always running; it is
2 always recording. But it breaks it up into one-minute
3 clips. And so it is -- every single one minute is its
4 own individual clip that is going through, if that
5 makes sense.

6 Q Uh-huh. Okay. So it is a continuos video
7 footage, but it is in one-minute increments; is that
8 correct?

9 A That is correct.

10 Q Okay. And then if you have an incident or
11 you make an arrest, then you can download that dash
12 camera and view it and provide it as part of
13 discovery; is that correct?

14 A That's correct.

15 Q Okay. And that was done in this case; is
16 that correct?

17 A That is correct.

18 Q Okay. And where is the dash camera located
19 in your patrol vehicle?

20 A The dash camera is dead center of my
21 windshield directly behind the rear-view mirror. So
22 up high and behind the rear-view mirror.

23 Q In the center of your vehicle?

24 A Correct.

25 Q Okay. So it is not necessarily capturing

1 your view as you are in the driver's seat of the
2 vehicle, but it is capturing what -- what it can
3 capture from the middle of the vehicle; correct?

4 A Correct.

5 Q Okay. And is it your experience in
6 reviewing dash cams in this case and other cases, that
7 the view from the dash cam is sometimes a little bit
8 different than what your actual perception was of the
9 events?

10 A Yes. Your actual perception is going to be
11 far greater than the dash cam would be.

12 Q And you're making that statement based on
13 other cases where you have reviewed dash camera
14 footage and you recall certain events?

15 A Yes.

16 Q Okay. I would like to start with playing --
17 we will start with Government's Exhibit 3-1.

18 And before we do that, I just want to
19 clarify for the record and for the Court, I spoke to
20 this initially when we started the hearing; but
21 Government's Exhibit 3 is the dash cam video of this
22 officer, Officer Tanner, from when the camera was
23 initiated to -- for this incident to the ending of
24 the -- well, let me ask you this:

25 When -- do you recall how long the dash

1 camera was activated in this case?

2 A I don't remember how many individual clips.

3 It would have been from -- I don't remember how many
4 there were before this one, and then it would be -- I
5 think it would be until the suspect was taken to jail.

6 But it could be when the vehicle was taken away, but
7 it'd be at the end of the investigation.

8 MS. REDDISH-DAY: So we'll start with -- so
9 again, Government's Exhibit 3 is the full dash cam
10 video that we have of this incident.

11 And then Government's Exhibit 3-1 through
12 3-5, are the one-minute clips that Officer Tanner
13 has referred to. And the reason why we are
14 providing the clips, 3-1 through 3-5, is because the
15 audio on Government's Exhibit 3 glitches at those
16 one-minute intervals.

17 So when the dash cam is put together into
18 a full and complete footage, it glitches, the sound
19 glitches so but the clips don't. So we are going to
20 play a couple of clips in order to show the Court --
21 I don't know that we can even see it -- but to show
22 the Court to the best of our ability what the dash
23 camera was capturing on that evening.

24 So if you can start with -- let's just
25 start with 3-1 which is the very -- which is when

1 the dash cam was activated.

2 And all of these exhibits, you know, the
3 Court can view after the hearing and probably in a
4 clearer fashion than how they are viewable on the
5 videos screens here in the courtroom. It is a little
6 bit dark.

7 (Government's Exhibit 3-1 played)

8 BY MS. REDDISH-DAY:

9 Q So what is playing is Government's Exhibit
10 3-1. Can you see that, Officer Tanner?

11 A Yeah. Yeah.

12 Q Can you describe what you are doing while
13 this is playing?

14 A Yeah. I am trying to relocate the suspect
15 vehicle that I observed at Maverick.

16 Q So you are traveling Northbound 15?

17 A Yes.

18 Q Do you see the subject vehicle in this
19 video?

20 A Yes. The suspect vehicle is in the number
21 one lane.

22 (End of video)

23 BY MS. REDDISH-DAY:

24 Q So on that video you can see the subject
25 vehicle in the number one lane traveling in front of

1 you, correct?

2 A That is correct.

3 Q And then you see a pickup truck change lanes
4 from the number two lane to the number three lane; is
5 that correct?

6 A Two lane to one lane.

7 Q Right. Number two lane to number one lane?

8 A Correct.

9 Q Okay. And so that truck was pulling behind
10 the subject vehicle; is that correct?

11 A Yeah. At the end of that clip, the truck
12 was behind the suspect vehicle.

13 Q Okay. So the next clip, Government's
14 Exhibit 3-2, has sound.

15 MR. BERARDI: Your Honor, can I inquire on
16 that clip before we go to this next clip or how does
17 the Court want to --

18 THE COURT: I think I'd like to watch them
19 through, but I will give you a chance in a minute.

20 MR. BERARDI: Okay.

21 MS. REDDISH-DAY: And before we play this
22 clip, this clip has audio from the very beginning so I
23 am not going to ask you any questions while this clip
24 is playing. This is Government's Exhibit 3-2.

25 (Government's Exhibit 3-2, video played.)

1 BY MS. REDDISH-DAY:

2 Q Were you able to see that clip, Officer
3 Tanner?

4 A Yes.

5 Q Okay. And at the very beginning of that
6 clip, we can hear you talking about this is probably
7 going to be a good car, he is showing every sign, he's
8 showing a lot of the travel signs, signaling for five
9 seconds before he goes over, pulled in the signal lane
10 for an additional three seconds, driving super
11 cautious. I'm going to try to stop him at 15 and a
12 half.

13 What are you -- first of all, who are you
14 talking to when you are saying that?

15 A I am speaking with Deputy Montgomery with
16 the sheriff's office that will ultimately end up
17 responding to this stop as well.

18 Q Okay. And why are you saying those things
19 in your vehicle while you are following the subject
20 vehicle?

21 A So I am explaining to him based off of both
22 of our trainings and experience with investigating
23 interdiction style stops, we typically see that
24 somebody that may be engaged in criminal activity,
25 they will take extra precautions when a vehicle -- or

1 a patrol vehicle or a police officer is behind them.

2 Such as they -- instead of signaling for
3 two seconds, they may signal for an additional two
4 seconds on top of that two seconds to avoid being
5 stopped. And then once they're in the lane, they
6 will signal for another three seconds in that lane.

7 They are overly cautious, and those kind
8 of situations stick out to us versus the innocent
9 motoring public that will not take those extra
10 precautions because they are not as concerned about
11 being stopped as somebody that may be involved in
12 criminal activity.

13 Q Okay. So those different indicators you
14 just described and that you stated that are captured
15 on the dash cam, those are not reasons to pull over a
16 subject vehicle; is that correct?

17 A That is correct.

18 Q Okay. And at that point, had you already
19 witnessed the violations that you've previously
20 described in your testimony?

21 A Yes. At that point, I had already observed
22 the front windshield obstruction violation. And I was
23 also observing the vehicle following too closely.

24 I got cut off a couple times when I was
25 going to explain to him that I was going to stop him

1 for that. And then eventually I get back on track,
2 and tell him hey, I am stopping him for these two
3 reasons.

4 Q Okay. So if we can play that clip again.
5 Is there a point -- and I will tell you when -- is
6 there a point when you are explaining the reason that
7 you are ultimately going to make the stop, you are
8 explaining that reason to Deputy Montgomery and he
9 interrupts you?

10 A Yes.

11 Q Okay. So let's listen to that, listen to
12 this again with that in mind.

13 (Video played)

14 Q Stop it.

15 A It was where I say I have -- and then he
16 starts talking about Quail Reservoir.

17 Q So when you start to say, "I have," what
18 were you intending to convey at that point before you
19 got interrupted?

20 A I have a stop on him for front windshield
21 violation.

22 Q Okay. So we can we continue again.

23 (Video played)

24 Q What was Deputy Montgomery talking about
25 when he interrupted you?

1 A Fishing at Quail Lake.

2 Q And during that clip, that video clip, is --
3 either on the previous video clip or this video clip,
4 do either of those video clips show the second
5 violation that you observed, the following too close
6 violation?

7 A So based off of where I am sitting in the
8 vehicle and where the dash cam, it is not going to be
9 very clear to see. I am looking through the left
10 side, engaging it off of the guardrail, the posts; and
11 then that's where I am counting the distance between
12 those fixed objects.

13 So because of my perspective versus the
14 dash cam, it is not going to show the distance
15 between the two.

16 Q Okay. But was there -- let's queue up the
17 video again at the very beginning. And again, it is
18 Government Exhibit 3-2.

19 (Video played)

20 Q So at this point -- we'll stop it there. At
21 the beginning of this clip, 3-2, have you observed the
22 violations yet at this point?

23 A Can you play it just for one more second?

24 Q Yeah, absolutely.

25 (Video played)

1 A. No. At that point I hadn't observed it and
2 hadn't started counting.

3 Q Okay. So we will continue to play the
4 video. And then can you alert, can you just say stop
5 when there's a point where you are observing the
6 violations as based on your recollection.

7 A Yes.

8 (Video played)

9 A. Stop. So at that point is when I started
10 positioning my car over on the shoulder and start
11 gauging off of the little post you can see on the
12 cement barrier.

13 Q Okay. So that based on this video and your
14 testimony earlier that you were counting one,
15 one-thousand; two, one-thousand, you are you doing
16 that at about this point roughly?

17 A Yes. For the course of pretty much the
18 conversation between me and Deputy Montgomery.

19 That's -- I am not really engaged in the conversation
20 with him, that's why I keep saying what is because I
21 am getting sidetracked and I am doing something else.

22 And then once I observe the violation, I go
23 back to okay, cool, I'm stopping him here and moving
24 on.

25 Q How are you able to observe the following

1 too close when you are behind the subject vehicle and
2 there's a pickup truck in between the two of you?

3 A That's correct. I am positioning my
4 vehicle, which is hard to see, but where I am sitting
5 offset to the left of my dash cam, I can see the
6 vehicle in front of this pickup truck, which is the
7 vehicle that I have been watching. And then in front
8 of him is a white passenger vehicle.

9 And I can see all three of their
10 taillights as I am traveling up I-15. I am using
11 the front lead car, the white passenger vehicle, as
12 my start point. When they pass a fixed object,
13 which is what I am using as these posts on the side
14 of the guardrail, as soon as the taillights pass
15 that -- on the white passenger vehicle passed the
16 points I began counting in my head one,
17 one-thousand; two, one-thousand, and I am seeing if
18 the vehicle, the black SUV is passing within that
19 two seconds.

20 Q Okay. And this is about the point that you
21 are making those or you begin to make those
22 observations?

23 A That's correct.

24 Q So does this camera footage now that you are
25 seeing it, you reviewed this prior to your testimony

1 today; correct?

2 A Yes.

3 Q And was it more clear when you viewed it
4 prior to today's testimony on a more clear screen than
5 what the Court has today?

6 A Yes. It's got really bad reflection.

7 Q So based on your earlier review, coupled
8 with your review of it today, is this dash camera
9 footage showing what your actual view was that day the
10 vehicle was traveling in front of you?

11 A No.

12 Q We can just continue with that video.

13 (Video played)

14 Q And is your patrol vehicle driving on the
15 shoulder at this point?

16 A Yeah. I am not in the lane of -- well, I am
17 splitting the lane right now and I have been for a
18 while.

19 Q While you are making the observations you
20 just described?

21 A Correct.

22 Q Continue.

23 (Video played)

24 MS. REDDISH-DAY: And then if we can play
25 Government's Exhibit 3-3, please, from the beginning.

1 (Government's Exhibit 3-3, Video played.)

2 MS. REDDISH-DAY: Stop that, please.

3 Q At this point, what are you doing?

4 A I am waiting for a safe location to stop the
5 vehicle.

6 Q Okay. Is the subject vehicle still in front
7 of you?

8 A He is in front of the pickup truck. And in
9 front of -- yeah, in front of the pickup truck that is
10 in front of me.

11 Q Okay. And are you traveling up an incline
12 at that point?

13 A Yes, we were going up the hill towards
14 Hurricane.

15 Q And you are headed towards the place that
16 you've already decided you are going to initiate a
17 traffic stop, correct?

18 A That's correct.

19 MS. REDDISH-DAY: Okay. If you can play it
20 again, please.

21 (Video played)

22 MS. REDDISH-DAY: We can hit stop.

23 Q Do you see the subject vehicle in that
24 video?

25 A I do. He is in the number two lane of

1 travel, just the -- right in front of the pickup truck
2 in the one lane.

3 Q So he switched lanes just before that to the
4 number two lane?

5 A Correct.

6 Q If you can hit play again.

7 (Video played)

8 Q At this point, you have already observed the
9 two traffic code violations; is that correct?

10 A That's correct.

11 MS. REDDISH-DAY: And then if you can play,
12 there's just two more clips. Government's Exhibit
13 3-4.

14 (Government's Exhibit 3-4, Video played.)

15 BY MS. REDDISH-DAY:

16 Q You can stop that briefly. What is depicted
17 in the video at this point?

18 A The white passenger vehicle that was
19 originally leading the pack is by itself in the number
20 one lane.

21 Q Okay. And that -- is that the same vehicle
22 that you described that subject vehicle was following
23 too closely at an earlier point?

24 A Yes.

25 Q And is the subject vehicle now passing that

1 white vehicle?

2 A It is, in the number two lane.

3 Q So was that white vehicle, do you have any
4 idea how fast that white vehicle was traveling?

5 A Probably 60 to 65. Under the speed limit.

6 Q Can you hit play again.

7 (Video played)

8 Q Are you following directly behind the
9 subject vehicle now?

10 A I am.

11 Q And you have not initiated the traffic stop
12 yet, correct?

13 A That's correct. I was trying to --

14 (Video played)

15 Q Before we play the last clip, at that point
16 are you simply following the subject vehicle?

17 A Sorry? One more time.

18 Q At that point where we've ended this clip,
19 are you simply following the subject vehicle at
20 that point?

21 A Yes. So I had just called out to dispatch,
22 which is a process. I have to say, control 61-10-60,
23 which is I am going to make a traffic stop; they have
24 to acknowledge me; and then they say go ahead, and
25 then at that point I am giving them the vehicle or the

1 vehicle and then the location we're stopping.

2 So I have to get all that out. And then
3 once all that's out, I know that I am not going to
4 get to the 16 exit at that point so it's going to be
5 just north of 16 when there's a safe place, a large
6 shoulder.

7 And so that I am waiting until he passes
8 that and then I am going to activate my emergency
9 lights so he knows now it is safe to pull over,
10 let's pull over here.

11 Q Okay. So let's start the next clip, please.
12 Government Exhibit 3-5.

13 (Government's Exhibit 3-5, video played.)

14 Q So, Officer Tanner, can you describe what is
15 depicted in that last clip, Government's Exhibit 3-5,
16 for the Court?

17 A That's me conducting the traffic stop on the
18 vehicle just prior to approaching the vehicle.

19 Q Okay. And if we can shift over to the body
20 cam for a moment.

21 When you are on duty, is it your practice
22 to wear a body camera to capture your actions?

23 A Yes.

24 Q And were you wearing a body camera on that
25 day?

1 A Yes.

2 Q Or on that evening?

3 A Yes.

4 Q Okay. And have you reviewed that body cam
5 footage in anticipation of your testimony today?

6 A Yes.

7 Q We'll pull up exhibit -- Government's
8 Exhibit 1, please. If we can hit pause on that
9 quickly.

10 So before we start playing some of this
11 footage, can you describe how your body camera works
12 as far as timing, when it is activated and what it
13 is capturing?

14 A Yes. So it is positioned on the center of
15 my vest. Once I activate the body camera, it will on
16 video go back 30 seconds without audio where it just
17 back records.

18 And then at the time that I actually in
19 realtime had activated my body camera is when the
20 sound will kick on.

21 Q Okay. So in this particular instance, when
22 did you activate the body cam?

23 A I have a standard procedure. I call out the
24 traffic stop and the location. And then it is usually
25 as I activate my lights or just before I activate my

1 lights I activate my body camera so I am not messing
2 with that as I exit the vehicle.

3 And then the body camera is already
4 activated and the vehicle comes to a stop and then I
5 exit my patrol vehicle.

6 Q So is it not your practice to have your body
7 camera activated while you are driving in your
8 vehicle, but only prior to making a contact with a
9 subject?

10 A Yeah, yes.

11 Q So it is not on the whole time that you are
12 traveling the freeway?

13 A No.

14 Q Is that fair to say?

15 A Yes.

16 Q So you activate it sometime before you make
17 that traffic stop; is that correct?

18 A Yeah, prior to making contact with the
19 driver of the vehicle.

20 Q Okay. And it's your testimony that it's
21 going to capture 30 seconds back without audio,
22 correct?

23 A Correct.

24 Q Okay. So we can go ahead and hit play at
25 this time.

1 (Government's Exhibit 1, video played.)

2 Q Were you able to see that on your video
3 screen, Officer Tanner?

4 A Yes.

5 Q Okay. And can you describe what is
6 happening during that segment of the body camera
7 video?

8 A This is my initial contact with
9 Mr. Alvarado. I am explaining to him the reason
10 behind the traffic stop, the violations I observed.

11 I am also requesting for his driver's
12 license, registration, insurance and figuring out
13 who owns the vehicle because he wasn't the owner of
14 the vehicle.

15 And I am explaining to him my process of
16 what I am going to do with the traffic stop, which
17 is give him warnings. And at that point, I began to
18 return to my car.

19 Q Okay. If we can scroll that back to based
20 on the time on the bottom of the screen at one minute,
21 six seconds.

22 (Video played)

23 Q If you can pause it where you can see into
24 the passenger window where he is at the passenger
25 window, when he first approaches the passenger window.

1 (Video played)

2 Q So at this point, are you -- does the camera
3 footage as you viewed it previously and then today,
4 does that capture what you were able to see with
5 regard to what is hanging from the rear-view mirror?

6 A Yes. At this point, I am able to identify
7 the exact objects that I observed originally at the
8 gas station and what they were.

9 And that's where I observed it to be a
10 COVID face mask covering and then the gold chain.

11 Q Okay. And then if we can fast forward to
12 three minutes and -- 3:00.

13 (Video played)

14 Q So during that time period beginning at 3:10
15 up to about six minutes, almost seven minutes, does
16 that capture the timeline that Deputy Montgomery
17 arrived and you two were beginning to search the
18 vehicle?

19 A Yes.

20 Q Okay. And at some point, did you hear in
21 that video where at which point Deputy Montgomery
22 indicated to you that he had found narcotics in the
23 vehicle?

24 A Yes.

25 Ω How did he do so?

1 A He stated bang-bang as I was going to open
2 the passenger back door.

3 Q Okay. And that was about how long after you
4 had initiated the stop of the vehicle?

5 A Probably -- when I initiated the stop of the
6 vehicle? Probably less than five minutes from
7 beginning to location of the narcotics.

8 Q Okay. What was the length of time, if you
9 can approximate, between when you smelled the strong
10 odor of marijuana at the passenger side of the vehicle
11 and Deputy Montgomery found narcotics in the vehicle?

12 A I could smell the odor right when I walked
13 up on the car, so that would have began 30 seconds
14 into my body cam starting.

15 And then we probably located the marijuana
16 three minutes after that. So probably a three
17 minute differentiation between the two.

18 Q Okay. And that's all captured on this body
19 cam footage; is that correct?

20 A That's correct.

21 Q Okay. And then if we can fast forward to --
22 skip through a little bit of this. The entire video
23 is about 36 minutes. And then the Court will be able
24 to review the entire video from beginning to end.

25 But just to highlight a couple portions of

1 video to the extent we can see them. Fast forward
2 it to approximately 8:55.

3 (Video played)

4 Q You can pause it there.

5 So in viewing that portion of the video, are
6 you able to see the cargo area of the vehicle that's
7 open to the passenger compartment?

8 A Sorry? One more time.

9 Q In viewing this portion of the video, is
10 this consistent with your view of the -- at the scene
11 of the cargo area that's open to the passenger
12 compartment of the vehicle?

13 A Yes.

14 Q Okay. And did the odor of marijuana become
15 stronger as you were back there?

16 A Yes.

17 Q Okay. Where did you find the marijuana
18 specifically in this cargo area?

19 A It was spread out in different locations.
20 But the bulk amount of marijuana was located in a
21 large cardboard box that was off to the driver's side
22 of the vehicle. And then just to the right of that
23 was a smaller cardboard box that also contained a
24 large sum of marijuana.

25 But then there was also marijuana that was

1 like -- a bundle was here and there mixed in with
2 the meth and the cocaine and other drugs that were
3 located as well.

4 Q So the cardboard boxes that most of the
5 marijuana was located in, were those sealed with tape
6 or how were they sealed?

7 A Yeah, they were cardboard boxes. The
8 marijuana was placed in vacuum sealed bags in the
9 cardboard box. There was a shirt placed over the top
10 of all the bundles and then it was -- the cardboard
11 box was taped up.

12 Q And so the marijuana packages were vacuum
13 sealed from your recollection?

14 A Yes.

15 Q Inside the cardboard box?

16 A Yes.

17 Q Did the vacuum sealing prohibit you in any
18 way from smelling what the contents of those packages
19 were?

20 A I am sure it assisted a little bit; but it
21 didn't do a very good job, no.

22 Q Okay. And so your testimony is that you
23 could smell the odor of marijuana back there as well
24 in the cargo area?

25 A Yes.

1 Q Okay. Despite the fact that they were in
2 sealed packages?

3 A Yes.

4 Q And let's fast forward to 11:50.

5 (Video played)

6 Q Let's stop right there for a second. So
7 this capturing right here on this video, what is
8 there?

9 A It was an orange construction vest that is
10 hanging behind the driver's seat in the back window
11 area. And then there's a single DeWalt drill on the
12 floorboard below it.

13 MR. BERARDI: What was that?

14 THE WITNESS: A DeWalt drill.

15 BY MS. REDDISH-DAY:

16 Q And is this the same vest you described in
17 your testimony that you saw while the vehicle was
18 traveling?

19 A Yes.

20 Q And we'll just hit play on this and let it
21 play for a few seconds.

22 (Video played)

23 MS. REDDISH-DAY: If you can hit pause.
24 Will you go back to 11:50 and hit pause.

25 BY MS. REDDISH-DAY:

1 Q So in viewing -- this view is from the
2 driver's side of the vehicle, correct?

3 A Correct.

4 Q Are you able to see the objects hanging from
5 the rear-view mirror there as well?

6 A I am.

7 Q Okay. So the Defendant did not remove the
8 item, is that the same way the items were when you
9 first approached the vehicle on the passenger side?

10 A It is.

11 Q Okay. And when you were able to observe
12 from this angle, were you able to observe the same
13 thing that you previously described?

14 A Yes.

15 Q Okay. And that is what?

16 A There is a gold chain hanging from the
17 rear-view mirror that proceeds past the face mask that
18 is also hanging from the rear-view mirror. The chain
19 is longer, but it goes a little -- or longer down, but
20 they are both hanging from the rear-view mirror.

21 Q Thank you. And if we can fast forward to
22 13:42.

23 (Video played)

24 MS. REDDISH-DAY: Can you go back a little
25 bit, please. Will you keep playing it, please.

1 (Video played)

2 MS. REDDISH-DAY: Will you pause, please.

3 Q So the passenger area is illuminated at
4 this point with some light, is that correct?

5 A Yes.

6 Q And are you able to even more clearly see
7 the objects hanging from the rear-view mirror at that
8 time?

9 A Yes.

10 Q And did your opinion at all change with
11 regard to those objects materially obstructing the
12 operator's view while driving?

13 A No.

14 Q Did you become more concerned or less
15 concerned once you saw them up close?

16 A Both times -- when I saw him at the gas
17 station, I was able to see that it was a larger
18 object. I didn't know what exactly it was, but I knew
19 that based off the size that it was a concern.

20 When I saw it up close, I was just able to
21 confirm what the specific objects were. But as far
22 as my concern level, my concern level didn't change
23 at all between the two because I -- it didn't really
24 matter what it was at that point, I just could see
25 that it was a large enough item to be of concern.

1 Q Okay. And that it confirmed for you that it
2 was a violation of the Utah Code?

3 A Correct.

4 Q And then this body camera footage is -- goes
5 to 36:24. If we can go to the very end. Maybe about
6 ten seconds from the end and then just hit play.

7 (Video played)

8 Q So the body camera ends at that point.

9 What is depicted just prior to your body cam
10 deactivating?

11 A That is all the narcotics that we located
12 during the search of the vehicle that were stacked up
13 in the back.

14 Q Is that after they were removed from the
15 vehicle?

16 A That's correct.

17 Q And then put back into the vehicle?

18 A That's correct.

19 Q Why were they put back in the vehicle?

20 A They were put back in the vehicle because at
21 this time, we still needed to wait for a wrecker to
22 come.

23 There was a possibility that we were going
24 to deliver the narcotics if cooperation went on.

25 And then also to show that where the narcotics were

1 located and what vehicle it belonged to for
2 documentation.

3 Q Thank you. And then did you physically
4 deactivate your body camera at that point?

5 A Yes.

6 Q Why did you do that?

7 A My investigation was completed at
8 that point. The agents were still working away in
9 their own vehicle with Mr. Alvarado; but at
10 this point, I was -- my investigation was complete. I
11 wasn't going to be taking any more actions speaking
12 with Alvarado or anything like that.

13 Q Okay. So is it your recollection that Agent
14 Jensen had already arrived at the scene by then?

15 A Yes. He was already on scene and speaking
16 with Mr. Alvarado with Hershey, I believe.

17 MS. REDDISH-DAY: Okay. I have nothing
18 further of this witness at this time.

19 THE COURT: Thank you. Officer Tanner, I
20 have just one or two quick follow-up questions for
21 you.

22 EXAMINATION

23 BY THE COURT:

24 Q I just want to make sure. Ms. Reddish-Day
25 asked you a time or two whether you formed an opinion

1 about the hangings and whether there was concerns and
2 so forth. I just want to ask you for a real clear
3 answer.

4 Was after seeing the items hanging from
5 the rear-view mirror up close, was your opinion that
6 they were obstructing the driver's view?

7 A Yes.

8 Q And that they were a violation of Utah Code?

9 A Yes.

10 Q Okay. Very good. And I wanted to ask, when
11 you were observing Mr. Alvarado at the gas station,
12 what did he do? Did he get gas or what was he doing?

13 A He did get fuel. He was sitting in the
14 driver's seat waiting for fuel to be done. And then
15 at that point, he left the gas station.

16 Q Okay. Thank you. And what's your dog's
17 name?

18 A Zook. Z-o-o-k.

19 Q Okay. And finally, would you -- I am sure
20 you have a fairly extensive cross-examination, do you
21 need any break, bathroom, anything like that before we
22 move on?

23 A Can I just get some water? I will be fine
24 after that.

25 THE COURT: And, Mr. Berardi, I will just

1 let you know for planning purposes that I do need to
2 send Mr. Alvarado back with the marshal at 4:30 is
3 when I'm going to have to let him go for the day.

4 MR. BERARDI: Okay. Well, I will start here
5 now.

6 THE COURT: Okay. Do what you can. Thank
7 you.

8 CROSS-EXAMINATION

9 BY MR. BERARDI:

10 Q Officer, let's go back to the 3.1, the very
11 first video we watched. Can you replay that from the
12 very beginning?

13 THE COURT: Let me interrupt you for just
14 one second. What is the styrofoam piece on your mic?
15 I don't know if it affects the recording, but let's
16 put it back on in case it does. Thank you.

17 BY MR. BERARDI:

18 Q So as you are playing this, if you watch, it
19 happens very quick on the right-hand side, we see
20 another police vehicle go off the ramp?

21 A Uh-huh, (affirmative).

22 Q So who was that?

23 A That is Sergeant Joe Watson with St. George
24 Police Department.

25 Q Okay. Was he watching this vehicle before?

1 A No.

2 Q No? Okay. So you're not switching places
3 with him then?

4 A No. So this -- what I testified to earlier,
5 there was an officer that was already at the Maverick
6 that I pulled up next to.

7 That is this officer that just happened to
8 be there at that location at the time. This is the
9 officer that I pulled up, he asked me what I was
10 doing. I said I was watching that vehicle off to
11 the right.

12 And then at that point he began following
13 the vehicle, too. But I -- I don't know what he was
14 following it, if he was going to try to stop it or
15 what. But he ultimately just gets back off the
16 exit. I don't know if he was responding to a call
17 or what he was doing.

18 Q So there was only one other officer at the
19 Maverick with you?

20 A That is correct.

21 Q Okay. So you said that what roused your
22 suspicions was his conduct, which he signaled too
23 long, he took twice as much time -- or had twice as
24 much distance between him and the vehicle in front of
25 him; things that a defensive driver I think would do.

1 But you determined these things to be
2 things that stick out that again of someone you're
3 going to potentially stop, correct?

4 A No. Not correct. So I never say that he
5 was too far from the vehicle.

6 I said that when he would signal, he would
7 signal for a greater time than normal, but I never
8 mentioned anything to do with him not traveling too
9 close to a vehicle. It is correct that those things
10 do draw my attention to the -- to individuals based
11 off training, yes.

12 Q So if you're a defensive driver, then you're
13 going to draw your attention --

14 A If you are a defensive driver?

15 Q The things that he is doing seem to be
16 things that a cautionary driver would do?

17 A Correct.

18 Q Okay. So how long was he at mile marker
19 eight at the Maverick?

20 A For a couple of minutes. When I showed up,
21 he was just pulling in to get fuel as well. I
22 estimate it to be between three and five minutes
23 before he left.

24 Q Okay. And how do we know -- he paid cash
25 for the gas?

1 A I don't know if he paid cash for the gas or
2 how he paid for the gas.

3 Q An officer didn't go into the Maverick with
4 him or to follow him in there?

5 A Not to my knowledge.

6 Q Okay. Are you familiar with the ALPR
7 system?

8 A I am.

9 Q Okay. And the restrictions that go with
10 that system?

11 A As of May of 2023, yes.

12 Q Okay.

13 THE COURT: For my sake, Mr. Berardi, would
14 you ask him to just clarify what that system is for
15 me.

16 MR. BERARDI: I'm sorry?

17 THE COURT: I don't know what that system
18 is. Would you just clarify that for me.

19 MR. BERARDI: Oh, okay. Sure.

20 BY MR. BERARDI:

21 Q Officer, would you describe the ALPR system?

22 A ALPR stands for Automated License Plate
23 Reader. Essentially there's license plate readers
24 throughout the country owned by entities such as
25 Vigilant, Diesel, Flock.

1 And what it does is when a vehicle passes
2 locations, it takes a still image of the vehicle and
3 time stamps where it was at and the time.

4 THE COURT: Very good, thank you. I didn't
5 recognize the acronym. Please go ahead.

6 BY MR. BERARDI:

7 Q Sure. And -- did you use that system that
8 day?

9 A For this vehicle?

10 Q Yeah.

11 A Yes. My automated license plate reader is
12 run 24/7 when I am working.

13 Q Okay. And did you pull a report from it?

14 A What do you mean by report?

15 Q I mean did you pull up that -- the car he
16 was driving?

17 A Did I research his travel history?

18 Q Yeah.

19 A Yes.

20 Q And that's not in your report anywhere,
21 right?

22 A That's correct. Our reports are off of
23 recollection.

24 Q All right. And so why wasn't that in your
25 report?

1 A Because my report is for officer
2 recollection.

3 Q Oh, okay, all right. And did you have an
4 active investigation going when you accessed that
5 system?

6 A At this time, there's an investigation based
7 off of the vehicle's travel, the suspicion that I had
8 in the vehicle. And this is also after May of -- or
9 prior to the new legislature of May of 2023.

10 Q Okay.

11 A Which with ALPR at that time before May of
12 2023, you could use ALPR for traffic offenses, wanted
13 persons, to conduct investigations, it was a lot more
14 broad until May of 2023 came into effect and
15 restricted it to only have an active investigation.

16 Q Okay. And what time did you make the call
17 to Agent Hiroshi for backup or to come to your scene?

18 A I didn't call Agent Hershey. I called
19 Detective Gibson, the Drug Task Force, after I located
20 the narcotics, which is seen on body cam that I
21 request dispatch to give him a call.

22 I don't know the exact time. We would
23 have to watch the body camera to get that. He then
24 does the contacting for Agent Hershey and Agent
25 Jensen to respond to my location.

1 Q Okay. And so -- you are saying you didn't
2 make that call until after you had stopped the
3 vehicle, right?

4 A After I had found the narcotics is when
5 Detective Gibson was notified to make those calls,
6 correct.

7 Q I mean that's after you stopped the vehicle
8 then obviously?

9 A Yes.

10 Q Okay. So why does his report reference mile
11 marker eight for a possible drug smuggling load if you
12 had already made the stop?

13 A You're going to have to ask Agent Hershey
14 that. I didn't write his report.

15 Q If you can, just give me specifically what
16 your hunch was or, you know, in this vehicle, or
17 reasons for the stop as far as what you actually
18 observed to give you, you know, reasonable suspicion
19 to stop the vehicle?

20 A The two traffic violations.

21 Q Okay. Anything else?

22 A No. That's why I stopped the vehicle.

23 Q And you said you made this -- you said the
24 violation of the following too close was observed
25 after you had already determined you were going to

1 stop the vehicle, right?

2 A For the front windshield obstruction
3 violation, correct.

4 Q And when you did the check on the vehicle,
5 did they inform you where the vehicle was registered
6 to or the address like where it was from?

7 A It was out of northern Utah. I can't
8 remember the exact address or city or who the
9 registered owner even was other than that it was his
10 cousin is what he stated.

11 Q What did you say? Something in Utah, did
12 you say northern Utah; is that what you said?

13 A Northern Utah.

14 Q Okay. So your report claims that you were
15 traveling on I-15 at mile marker 11 when you first
16 observed Mr. Alvarado; is that right?

17 A When I observed him, yes.

18 Q I am sorry, what?

19 A It says when I observed Mr. Alvarado's car,
20 yes.

21 Q And so you actually encountered Mr. Alvarado
22 23 minutes prior to mile marker 11, correct, at mile
23 marker eight; right?

24 A Sorry? One more time. I think you said
25 23 miles or something like that.

1 Q I said that you actually -- I said 23
2 minutes prior to mile marker 11 at mile marker number
3 eight.

4 I mean you encountered him first at eight,
5 right?

6 A That's correct. That's when I first
7 observed him.

8 Q So not 11 like it's -- I have here in your
9 report, it states that you are traveling on I-15 at
10 mile marker 11 when you first observe Mr. Alvarado?

11 A I don't believe it says first observed.
12 It's just when I reobserved him and located him,
13 correct, but not first.

14 MS. REDDISH-DAY: Your Honor, can I approach
15 for a moment? I realize I left my file on the podium.

16 THE COURT: You may.

17 MS. REDDISH-DAY: Sorry about that.

18 BY MR. BERARDI:

19 Q So let's go back to the body cam footage
20 again. I notice the time is not right on that, is
21 that correct? Does it say 15:29?

22 A So this is the dash cam. And that must not
23 be correct, no.

24 Q That's what I'm saying, so the time stamp is
25 incorrect on that; right?

1 A Yeah.

2 Q It's not three in the afternoon?

3 A No, there is no way it is 3:30 in the

4 afternoon.

5 Q How is that set on those -- on that?

6 A I don't program my dash cam or anything in

7 my vehicle. That's how it is issued to me, so I

8 couldn't tell you how it is programmed or anything to

9 do with it. I just turn it on.

10 Q So you just turn it on or off?

11 A When I activate my vehicle, turn my vehicle

12 on is when the dash cam starts going. So I don't have

13 anything to do with that stuff.

14 Q Okay. So you turned your body cam video on

15 back at mile marker eight, correct?

16 A No. Not my body camera. My body camera

17 gets activated as I am exiting my vehicle to make

18 contact with the driver.

19 Q So what time did you activate your body cam?

20 A I'd have to go back to the body cam video to

21 tell you the exact time. But when I would activate my

22 body camera would be as I call out the traffic stop, I

23 activate it prior to making contact with the vehicle I

24 had stopped.

25 Q Okay. So your first encounter with my

1 client based off the ALPR report was 20:13 hours; is
2 that right?

3 A If that's when he passed my vehicle
4 stationary, then that would be correct.

5 Q At mile marker eight?

6 A At mile marker eight.

7 Q And you activate your body cam at 20:34
8 hours at mile marker eight; is that right?

9 A One more time with the body camera at mile
10 marker eight?

11 Q I said then you activated your body cam at
12 20:34 hours at mile marker eight?

13 A Not at mile marker eight, no. At mile
14 marker 16 when I began to approach the vehicle on the
15 traffic stop is when my body camera would be
16 activated.

17 Q So you are saying you activated it at mile
18 marker 16?

19 A Correct.

20 Q So I am looking at 21 minutes between the
21 first encounter and the second encounter.

22 When you pulled back on to the highway,
23 you were continuously moving and you didn't stop
24 anywhere, correct, after you left the Maverick?

25 A Correct.

1 Q And you were attempting to catch up you said
2 to my client, correct?

3 A After he proceeded back on to I-15 to go
4 northbound from the gas station, that's correct.

5 Q Okay. Were you doing anything else in that
6 time period or were you just trying to locate or stop
7 that vehicle? Did you -- you had already done the ALR
8 check, right?

9 A The ALPR?

10 Q Yeah.

11 A So the ALPR -- when he exits mile marker
12 eight and goes to the gas station, sits in the gas
13 station, and I am sitting with that officer that we
14 talked about before, that's when the record check on
15 the LPR was done as well as any registration or
16 anything like that for the traffic side of it.

17 And then he proceeds to leave, and then
18 that's when I proceed to follow him.

19 MR. BERARDI: If I could have one moment,
20 Your Honor.

21 THE COURT: You may.

22 (Counsel confers with client off the
23 record.)

24 BY MR. BERARDI:

25 Q So, Officer, let's back up to the things you

1 observed that give you indications that a vehicle may
2 be transporting drugs or whatever.

3 I mean do you profile vehicles then?

4 A No. I profile behaviors based off of what
5 they do in my presence.

6 Q Okay. How about as far as out of state
7 plates?

8 A Nope. This is a Utah plate.

9 Q What if the vehicle -- vehicles with out of
10 state plates, you said you don't profile that?

11 A All vehicles transport narcotics, as you can
12 see. Utah, narcotics loads out of every state.

13 Q So certain -- so certain states don't raise
14 your suspicion or anything?

15 A No.

16 Q Okay. Are you familiar with Saul Marino or
17 Eddie Uncera or Red Jones, those individuals,
18 defendants?

19 A Yes. The last one, Red Jones, is familiar.

20 Q I think they are all your cases?

21 A Correct.

22 Q Okay. All these vehicles that were pulled
23 over in those cases all have out-of-state plates?

24 A Possibly.

25 MS. REDDISH-DAY: Your Honor, I'm going to

1 object to relevance. If we are going to be getting
2 into additional cases this officer has been involved
3 in, especially with regard to out-of-state plates when
4 this wasn't even an out of state case.

5 MR. BERARDI: Strike it, Your Honor.

6 THE COURT: Very good. Sustained.

7 BY MR. BERARDI:

8 Q Okay. So one thing -- one reason you have
9 for the stop is the fact that there was large items
10 hanging from the mirror, correct?

11 A Correct.

12 Q Okay. And how did he end up being charged
13 with the illegal tint and following too closely? I
14 can understand following too close; how did the
15 illegal tint get charged?

16 A I don't recall the tint charge at all.
17 Unless it was something that was investigated
18 afterwards, but I don't remember the tint charge. It
19 would have been --

20 Q If it was on the charging Information, I
21 think the lower court here, but you don't recall --
22 you don't know why or how?

23 A Unless it was a glitch of instead of being
24 front windshield violation because I don't know where
25 the tint would have came from in substitution of the

1 windshield obstruction violation.

2 Q So you work for Washington City, correct?

3 A That's correct.

4 Q And so mile marker eight, is that -- is just
5 outside of that jurisdiction, right?

6 A Correct.

7 Q Okay. So the ALPR also revealed that two
8 minutes after the first encounter you inquired about
9 the license plate; is that correct?

10 A What do you mean by inquire about the
11 license plate?

12 Q That you inquired about the license plate.

13 A Like I researched it after it passed?

14 Q Yeah.

15 A That's probably correct. I don't know the
16 exact time.

17 Q And what did that inquiry reveal?

18 A That the vehicle had traveled into
19 California and out of California in I believe less
20 than 48 hours or something like that. I can't
21 remember the exact dates and times.

22 Q And you are saying at the time this incident
23 happened, you didn't have to have a warrant to search
24 the historical data?

25 A This is prior to May of 2023, when you could

1 run ALPR for a majority of different reasons. For
2 investigation of traffic offenses, for missing
3 persons, wanted persons, active investigation
4 purposes. It was very broad on what you could use it
5 for.

6 ALPR was commonly used for expired
7 registrations or if they were wanted persons it
8 would tell you that and that's what you would run it
9 for. So that that's what it was, for that purpose.
10 After May 2023, it restricted itself with the new
11 legislature.

12 Q So you're saying at this time that it wasn't
13 restricted?

14 A No. This is prior to April of 2023 -- or
15 May of 2023, sorry.

16 Q And you said that -- what was the name of
17 the officer you called for the backup? You said it
18 wasn't Hiroshi, who was it?

19 A So it's Agent Hershey. But the officer that
20 I contacted was Deputy Montgomery that you hear
21 talking on the phone with me.

22 Q Okay. I thought you said you called
23 somebody else and then they contacted Hiroshi; is
24 that --

25 A So I contacted -- once the narcotics were

1 located, Detective Gibson, who is assigned to the
2 Washington County Drug Task Force but is employed with
3 Washington City Police Department where I work, he was
4 not able to respond to assist with the investigation.
5 So at that point he contacted Agent Hershey and Agent
6 Jensen to come assist me with the investigation.

7 Q Okay. Now the dispatcher record shows I
8 have three different officers including you arriving
9 at the same time at the traffic stop.

10 A Okay.

11 Q Who -- who is the third one?

12 A That's -- I don't know.

13 Q You are saying there's just two officers,
14 you and Montgomery?

15 A Me and Montgomery, yes.

16 Q And -- may I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 BY MR. BERARDI:

20 Q So down here on this record right here, I've
21 got three officers.

22 THE COURT: What are we looking at,
23 Mr. Berardi?

24 MR. BERARDI: I'm sorry, Your Honor. It
25 is --

1 THE WITNESS: Cad comments is what it's
2 called.

3 BY MR. BERARDI:

4 Q What's it called?

5 A Cad comments. It's our spillman system when
6 they log officer's activities, I guess.

7 THE COURT: Okay.

8 MS. REDDISH-DAY: Your Honor, I ask this be
9 marked. Does defense intend to enter those as
10 exhibits or just question the officer about them?

11 MR. BERARDI: Probably so, if we can get a
12 sticker. This is marked Defense Exhibit 1.

13 (Defense Exhibit No. 1 marked for
14 identification.)

15 BY MR. BERARDI:

16 Q So on the bottom, you see it said three
17 officers?

18 A Correct.

19 Q So who is that third officer?

20 A So 6XA is my sergeant that responds later on
21 after me and Dan Montgomery show up.

22 Q Okay. Because it shows you all arrived at
23 the same time, right?

24 A No. I don't know why it would show that.
25 But as you can see on body cam, things like that, he

1 does not show up at the same time.

2 He shows up after narcotics have already
3 been located and everything. But yes, they logged
4 it like that. I don't know, I can't tell you why, I
5 don't run that system.

6 Q So you are saying that's inaccurate?

7 A The time of arrival?

8 Q Yeah.

9 A Yes, is inaccurate. But he does show up and
10 you will see him on the body cam, but it is later. It
11 is not the same time.

12 MR. BERARDI: Okay. I will hold that
13 exhibit, Your Honor.

14 THE COURT: Okay.

15 MR. BERARDI: For now.

16 BY MR. BERARDI:

17 Q Approximately what time did you say your
18 supervisor showed up?

19 A It is probably at least 10-15 minutes into
20 the investigation from the time I stopped the vehicle
21 after he had showed up, and the vehicle had already
22 been searched.

23 The suspect had already been placed into
24 handcuffs and already placed in the patrol vehicle.

25 And we were continuing to search the vehicle when he

1 showed up. So however much time that was. I'd say
2 about 10-ish, 15 minute.

3 Q But it was before the other two officers
4 showed up, your DEA agent and --

5 A I don't recall exactly when they showed up.
6 I was focused on the vehicle.

7 I wasn't necessarily taking mental notes
8 on when people were showing up on the scene.

9 Q Were those two officers and you three
10 officers, were you all there at the same time at
11 some point?

12 UNIDENTIFIED SPEAKER: (From the gallery)
13 What about the tinted windows?

14 THE WITNESS: One more time, sir.

15 BY MR. BERARDI:

16 Q You, Montgomery, and your supervisor, were
17 you guys all present at the same time those other two
18 officers showed up later?

19 A Yes, I believe so.

20 Q Okay. So at some time, some point, all five
21 of you were there together?

22 A Correct.

23 MR. BERARDI: I think that's all I have as
24 far as cross-examination goes.

25 THE COURT: Okay, very good. Any redirect?

1 MS. REDDISH-DAY: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. REDDISH-DAY:

4 Q Counsel asked you a few questions about the
5 ALPR and you running the license plate through that
6 system, correct?

7 A Correct.

8 Q And just so we are clear, you did that while
9 you were at the Maverick gas station observing the
10 Defendant's vehicle?

11 A Correct.

12 Q Okay. And is that a common practice that
13 you engage in as a drug interdiction officer?

14 A This was prior, yes. Prior to May of 2023,
15 when you could run ALPR for different reasons.

16 So if I had a vehicle of interest, I would
17 run LPR if I was either prior to this -- always
18 prior to the stop, but to build more of an
19 understanding of this vehicle's travel for
20 discussion to see if their story matches the travel,
21 so yes.

22 Q But did you use that information as a basis
23 for your later traffic stop?

24 A No.

25 Q And did that impact your ability to view the

1 Utah Traffic Code violations that you viewed with the
2 objects hanging in the rear-view mirror at the
3 Maverick gas station?

4 A No.

5 Q As well as the following too close violation
6 later?

7 A No.

8 Q And you wrote a report in this case,
9 correct?

10 A Correct.

11 Q And you also drafted a probable cause
12 statement?

13 A Correct.

14 Q And that probable cause statement is
15 provided to the State Court prosecutors who then later
16 file charging documents; is that correct?

17 A Correct.

18 Q Okay. And are you responsible in any way
19 for how this case ultimately gets charged in court?

20 A No.

21 Q Okay. And in your probable cause statement,
22 do you mention anywhere that there's a window tint
23 violation?

24 A This is all news to me. I don't recall it
25 so I don't believe so. I'd have to --

1 Q Would --

2 A Yes.

3 Q Would looking at the report refresh your
4 recollection?

5 A Yes. Because I don't recall ever writing
6 that or where that is coming from.

7 MS. REDDISH-DAY: May I approach the
8 witness, Your Honor?

9 THE COURT: You may.

10 MS. REDDISH-DAY: I am handing the officer
11 his probable cause statement.

12 BY MS. REDDISH-DAY:

13 Q Have you reviewed that document?

14 A Yeah.

15 Q Does that refresh your recollection?

16 A Yes.

17 Q Did you at any point in your probable cause
18 statement indicate that you initiated a traffic stop
19 based on a window tint violation?

20 A No.

21 Q And did you in your report in this case,
22 which is in addition to your probable cause statement,
23 did you put in your report in any place that you
24 initiated this traffic stop based on a window tint
25 violation?

1 A No.

2 Q So if that was charged by the State
3 prosecutor; is that news to you today?

4 A Yes.

5 Q And you are not responsible again for that
6 charging document; is that correct?

7 A Correct.

8 Q Have you ever reviewed that charging
9 document?

10 A No.

11 Q And the -- just to reiterate, the -- your
12 Sergeant from Washington City who responded, what is
13 his name?

14 A Lance Bartriff.

15 Q And he did, in fact, respond after you had
16 already located drugs in that vehicle; correct?

17 A Correct.

18 MS. REDDISH-DAY: I have nothing further,
19 Your Honor.

20 THE COURT: Okay, very good. Officer
21 Tanner, appreciate you being here today. You are
22 excused and are free to go.

23 THE WITNESS: Do I just leave this here?

24 THE COURT: Leave that right there,
25 Ms. Reddish-Day will collect that.

(Witness excused.)

7 Mr. Berardi, any suggestion there?

10 THE COURT: I understand. I just want to
11 make sure if there's any legal issues or something
12 like that, that we want Mr. Alvarado here for, we do
13 that in the next few minutes here.

14 Ms. Reddish-Day, anything of that nature
15 we ought to take up?

16 MS. REDDISH-DAY: No, no. We do have
17 additional witnesses. Your Honor.

22 MS. REDDISH-DAY: I will do whatever the
23 Court would like to do. I do not believe we will
24 finish Deputy Montgomery in ten minutes with
25 cross-examination.

1 THE COURT: Okay. Let's begin with him as
2 soon as we start tomorrow.

3 It sounds like Judge Nuffer laid out a
4 schedule in which he suggested this could be picked
5 up at 11:00 a.m. tomorrow. That works for me. I
6 will let you know my 10:00 calendar, I don't think
7 it will take an hour.

8 If you want to show up any earlier than
9 11, I think we can start earlier than 11; but I
10 think we have the rest of the afternoon as needed
11 tomorrow.

12 Ms. Reddish-Day, anything else we ought to
13 take care of today?

14 MS. REDDISH-DAY: Your Honor, I will just
15 readdress since we are going to reconvene tomorrow at
16 11:00 a.m., if there is still a need for us to have
17 HSI Task Force Officer Agent Hershey available to
18 testify as well as DEA Agent Marcus Jensen.

19 They have been outside all afternoon, and
20 again I don't want to reiterate what I argued earlier
21 as to the relevancy of their testimony since we are
22 not, I don't believe, going to be litigating the
23 admissibility of the statements of the Defendant.

24 But I just wanted to bring that objection
25 up again, and see if we can dismiss Mr. --

1 MR. BERARDI: I am still not agreeing to let
2 them go. I don't know about the others, but Hiroshi I
3 definitely want to.

4 THE COURT: Okay. Let's ferret that out a
5 little bit.

6 And I hope that doesn't sound insulting, but
7 I just want to make sure that any time that you
8 mention the name Hiroshi on the record, I think you
9 mean Agent Hershey; is that correct?

10 MR. BERARDI: Excuse me, Your Honor, yes,
11 Hershey.

12 THE COURT: Okay. Just for clarity sake.
13 So it sounds like you would like Agent Hershey here
14 tomorrow, but not Marcus Jensen; is that correct? Or
15 are you keeping that in reserve for now?

16 MR. BERARDI: Yeah, I'd like to keep that in
17 reserve, too. Yeah, I -- I think he can probably be
18 released. I am not anticipating anything for him; but
19 again, if something comes up, then I am, you know.

20 THE COURT: I understand. Let's do this
21 then. I am not going to require Agent Jensen to be
22 here tomorrow. He is local. We might be able to
23 bring him here quickly. If not, we will entertain
24 what we need to do beyond that; but maybe you can ask
25 him not to disappear too far out of town.

1 But these things are factually based enough,
2 I think I am going to require Agent Hershey to be
3 available until it becomes obvious he is not needed.
4 Are you content with that plan?

5 MR. BERARDI: Yeah. Very well, Your Honor.

6 THE COURT: Okay. Let's do that. If
7 there's nothing else for the record then, we will
8 adjourn this hearing until 11:00 a.m. tomorrow or a
9 few minutes earlier if everybody is ready to go.

10 We are adjourned.

11 (Proceedings adjourned for the day at 4:23 p.m.)

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C E R T I F I C A T E

STATE OF UTAH

)

COUNTY OF WASHINGTON

) ss.

This is to certify that the proceedings in the
going matter were reported by me, Tasha Sisneros,
CRR, CSR, CRC, in stenotype and thereafter
scribed into written form;

That said proceedings were taken at the time and place herein named;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

In witness whereof I have subscribed my name this
15 day of December 2023.

Jash Sisneros

Tasha Sisneros, RPR, CRR, CRC, CSR